

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

**C.P. NO. IB-693(PB)/2018**

**IN THE MATTER OF:**

**L&T Finance Limited** .....**Financial Creditor/Petitioner**  
**v.**  
**NSP Hospitech (India) Private Limited**  
.....**Corporate Debtor**

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

**Judgment delivered on 12.12.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**DR. DEEPTI MUKESH**  
**Hon'ble Member (J)**

**PRESENTS:**

For the Petitioner: Ms. Amrita Narayan & Mr. Ashwin Rakesh,  
Advocates

For the Respondent: Mr. P. Bhattacharya & Mr. Yashraj Singh  
Advocates

**M.M. KUMAR, PRESIDENT**

**JUDGMENT**

L&T Finance Limited (for brevity 'Financial Creditor) has filed the instant petition under Section 7 of the Insolvency and bankruptcy Code, 2016 (for brevity 'the Code') with a prayer for initiation of Insolvency Resolution Process in the matter of M/s. NSP Hospitech India Private Limited (for brevity 'the Corporate

Debtor'). It is appropriate to mention that the Financial Creditor is a non banking financial company duly registered with the Reserve Bank of India. It was incorporated on 24.11.1993. The identification number of the Financial Creditor is U65910WB1993FLC060810. It has its registered office at Technopolis, 7<sup>th</sup> Floor, A-Wing, Plot No. 4, Block-BP, Sector-V, Sal Lake, Kolkata, West Bengal-700091. It is engaged in the business of, *inter alia*, providing various kinds of financial services and facilities.

2. The petition has been duly verified, signed and filed by Mr. Shashank Oswal, Team Manager-Legal of the Financial Creditor by virtue of the Board resolution dated 15.06.2018 passed in his favour (Exhibit-A).

3. The Corporate Debtor – M/s. NSP Hospitech India Private Limited was incorporated on 09.09.1997 with authorized share capital of Rs. 25,00,000/- and paid up share capital of Rs. 7,73,000/- which is based on the details given in master data obtained from the official website of Registrar of Companies. The identification number of the Corporate Debtor is U51505DL1997PTC089512 and its registered office is situated at H-1537, Lower Ground Floor, Chitranjan Park, New Delhi South

Delhi-110019. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal being Adjudicating Authority has territorial jurisdiction in respect of respondent corporate debtor as per the provisions of sub-section (1) of Section 60 of the Code.

4. The 'Financial Creditor' has proposed the name of Resolution Professional, Shri Dhiren Shantilal, B-102, Bagirathi Niwas, Near Natraj Studio, Sir M.V. Road, Andheri East, Mumbai-400069, email id – dss@dsshah.in. He has registration No. IBBI/IPA-001/IP-P00220/2017-18/10419. A written communication dated 17.05.2018 made by Mr. Dhiren Shantilal in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record (at pgs. 189-190). There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Dhiren Shantilal, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.



5. It is the pleaded case of the Financial Creditor that the Corporate Debtor approached them to avail certain loan/credit facilities. Pursuant to which, the Financial Creditor addressed a sanction letter to the Corporate Debtor wherein they were informed that their request has been considered favourably and Pre-shipment facility was sanctioned to the tune of Rs. 40,00,000/- (Rupees Forty Lakhs Only). A copy of the sanction letter dated 01.08.2017 has been placed on record (Exhibit-D).

6. The abovementioned credit facilities were accepted by the Board of Directors of the Corporate Debtor through Board Resolution dated 01.08.2017. A copy of the Board Resolution has been placed on record (Exhibit-E). On 02.08.2017, the parties entered into a facility agreement wherein pre-shipment facility for Rs. 40,00,000/- was sanctioned in favour of the Corporate Debtor. A copy of the facility agreement dated 02.08.2017 has been placed on record (Exhibit-B).

7. As per the averments of the Financial Creditor the first default committed by the Corporate Debtor in payment has happened on 03.11.2017.

8. Thereafter the Corporate Debtor issued a cheque bearing No. 830372 dated 01.03.2018 for a sum of Rs. 23,34,961/-

(Rupees Twenty Three Lakh Thirty Four Thousand Nine Hundred Sixty One Only) in discharge of its liability. When the said cheque was presented for encashment it was returned unpaid with remark "exceeds arrangement".

9. Feeling aggrieved, the petitioner issued a notice dated 02.04.2018 (Exhibit-F) under Section 138 of the Negotiable Instrument Act to the Corporate Debtor demanding a sum of Rs. 23,34,961/- within 15 days of receipt of said notice but despite repeated reminders the Corporate Debtor failed to clear the outstanding dues of the Financial Creditor.

10. A record of default is available with the Credit Information Bureau (India) Limited (CIBIL) as per its commercial credit information report of the Corporate Debtor based on report dated 19.04.2018 (Exhibit-C). The Financial Creditor then submitted a copy of the statement of account of the Corporate Debtor (Exhibit-G).

11. In column 2 of part IV the amount claimed to be in default and the date on which the default occurred, have been detailed. According to the averments made by the Financial Creditor the aforesaid facility availed by the Corporate Debtor are overdue and total amount in default as on 20.04.2018 is Rs. 23,89,789.27/-

together with interest @ 14% per annum and interest on delayed payments @ 18% per annum. Further interest @ 18% has also been claimed till the realization of the amount.

12. Learned counsel for the Corporate Debtor has opposed the admission of the petition and has advanced the following arguments:-

- i) The Financial Creditor failed miserably to explain the nature of financial facilities being extended to the Corporate Debtor in terms of the Facility Agreement.
- ii) The alleged facility is merely a pre-shipment facility extended to the Corporate Debtor wherein the repayment towards the draws made by the Borrower (the Corporate Debtor) under the agreement was to be set-off against such invoices raised by the borrower on the Anchor/MRN/GRN/ Confirmation as reflected in Anchor Company Portals. In that regard reliance has been placed on para B at Page No. 19 & point 3 sub-clause (2) at page 22 of the facility agreement which reads as under:-



“B. The Borrower is in the business as more particularly described in the Memorandum and Articles of Association/Constitution documents of the Borrower, as amended from time to time. In the course of its business the Borrower supplies/sells goods and/or renders services (hereinafter referred to as the **“Goods or Services”** as the case may be) to L&T ECC Limited (B&F) (hereinafter referred to as the **“Anchor”**) from time to time and raises invoices containing particulars of Goods supplied/services rendered and amounts due under such invoices, each of which invoices are payable by the Anchor after a credit period allowed by the Borrower to the said Anchor.

3.2 The Borrower shall be entitled to a revolving credit period of such number of days as mentioned in Schedule I (hereinafter referred to as ‘the Credit Period’) for every drawdown made by the Borrower under this Agreement.



*The repayment towards the draws made by the Borrower under this Agreement shall be by way of set-off against the Invoices raised by the Borrower on the Anchor/MRN/GRN/Confirmation as reflected in Anchor Company portals. The Borrower shall submit to the Lender, the Invoices raised by the Borrower on the Anchor under the Vendor Finance Facility. In the event the Invoices are approved by the Lender under the Vendor Finance Facility, the Lender shall set-off the amount against the repayment due under the Pre-Shipment facility. The Borrower agrees that the amount so set-off shall be deemed to be a disbursement under the Vendor Finance Facility.”*

- (iii) The Corporate Debtor had received work contract from L&T ECC (B&F) in March, 2014 thereafter a bill discounting facility contract was signed with the Financial Creditor. A copy of the said contract has been placed on record [Annexure R/ 1 (Colly)].

- (iv) The Financial Creditor deliberately concealed that the Corporate Debtor was never under any obligation to make any payment in form of EMIs or any other mode to satisfy the said outstanding in the such facility, instead the L&T ECC (B&F) used to release the payment directly to the Financial Creditor to satisfy such outstanding in the accounts of the Corporate Debtor.
- (v) The Corporate Debtor has executed power of attorney in favour of L&T ECC (B&F) for releasing payment directly to the Financial Creditor in respect of such facilities. A copy of power of attorney dated 05.12.2017 has been placed on record (Annexure R/2)
- (vi) The receivables from L&T ECC (B&F) i.e. the 'Anchor' is more than the dues receivables as alleged by the Financial Creditor and moreover the petition has been filed with ill-motive to secure advantage to the 'Anchor' indirectly. Copies of ledger account of L&T ECC (B&F) has been placed on record (Annexure R/4).
- (vii) All the projects have been delivered on time as agreed upon, whereas the 'Anchor' had failed miserably to pay



the dues on time thus indirectly enriching the Financial Creditor.

(viii) The parties are bound by the agreement signed amongst them wherein the Financial Creditor was required to issue demand notice recalling the dues on default by the Corporate Debtor. However, no such notice has been given by the Financial Creditor to substantiate their claims.

13. An affidavit in 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. The objections raised by the Corporate Debtor are without any substance. The first objection is that the Financial Creditor has failed to explain the nature of financial facilities extended to the Corporate Debtor under the Facility Agreement dated 02.08.2017. The aforesaid objection is wholly untenable because the loan has been disbursed to the Corporate Debtor in accordance with the Facility Agreement and it is verified by the CIBIL account dated 19.04.2018 (Exhibit-C). It is also evident from the accounts of the Corporate Debtor placed on record by the Financial Creditor (Annexure-G). The entries dated

20.04.2018 show beyond any reasonable doubt that a sum of Rs. 23,89,789.27/- (Rupees Twenty Three Lakhs Eighty Nine Thousand Seven Hundred and Eighty Nine) was balance payable on that day and this is the amount which has been claimed in column II of Part IV as the amount in default. It is also pertinent to mention that the Corporate Debtor has sent a cheque bearing No. 830372 dated 01.03.2018 for a sum of Rs. 23,34,961 (Twenty Three Lakhs Thirty Four Thousand Nine Hundred Sixty One) and the aforesaid cheque was dishonoured as per the endorsement of the bank 'exceeds arrangement'. In other words, there was insufficient funds. The aforesaid amount was due and payable on 01.03.2018 and the amount claimed by the Financial Creditor in this petition is Rs. 23,89,789.27/- (Rupees Twenty Three Lakhs Eighty Nine Thousand Seven Hundred and Eighty Nine) as on 20.04.2018 which obviously is slightly more because additional interest component has been added. The issuance of cheque and its dishonour would further show that there is a default. Had it not been so then the Corporate Debtor would not have issued such a cheque at the first instance. The nature of credit facility availed by the Corporate Debtor is pre-shipment facility. The aforesaid cheque was issued after working out the arrangement



contemplated by para 3 of the 'facility agreement'. It is appropriate to mention that as per clause 3.1 of the 'facility agreement' the Corporate Debtor was to pay the Financial Creditor facility amount, interest and other charges as specified in the schedule to the agreement on the due dates without any deduction or abatement whatsoever. It was thereafter that the Corporate Debtor was entitled to a revolving credit period as such number of days as mentioned in schedule I for every drawdown made by the Corporate Debtor under this agreement. It was after working out the aforesaid clauses that the cheque has been issued and default has occurred. Therefore, various objections would not call for any serious adjudication and there is nothing on record to explain the non payment of the amount of cheque issued by the Corporate Debtor. Even the Power of Attorney on which reliance has been placed was executed on 05.12.2017 and the cheque for a sum of Rs. 23,34,961 (Twenty Three Lakhs Thirty Four Thousand Nine Hundred Sixty One) was issued subsequently on 01.03.2018. Therefore, the objections raised by the Corporate Debtors are without any substance and are hereby rejected.



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

16. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.

17. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in the case of ***ECL Finance Limited v. Digamber Buildcon Private Limited*** in C.P. No. IB-1039(PB)/2018 decided on 27.11.2018.

18. A conjoint reading of the aforesaid provision would show that form and manner of the petition has to be the one as prescribed. It is evident from the record that the petition has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. We are satisfied that amount was duly disbursed and a default has occurred. The petition under sub section 2 of Section 7 is complete as no disciplinary proceedings are pending against the

proposed Interim Resolution Professional. Thus, the petition warrant admission.

19. As a sequel to the above discussion, this petition is admitted and Mr. Dhiren Shantilal is appointed as the Interim Resolution Professional (Details stated in para 4).

20. 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 petition under Section 7 of the Code.

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 and a surety in a contract of guarantee to a corporate debtor. 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. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

- Sd -  
12.12.20  
(M.M. KUMAR)  
PRESIDENT

- Sd -  
(DR. DEEPTI MUKESH)  
MEMBER (JUDICIAL)

12.12.2018  
Vineet