

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -27/I&BP/MB/2019  
Under Section 7 of the I&B Code, 2016  
In the matter of  
Bank of India  
Star House, C-5, G- Block, Bandra-Kurla  
Complex, Bandra (east), Mumbai – 400  
051

.... Petitioner

Vs.

Housing Development and Infrastructure  
Ltd.  
9-01, HDIL Towers, Anant Kanekar Marg,  
Bandra (east), Mumbai – 400 051

.... Corporate Debtor

Order delivered on:20.08.2019

**Coram:**

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Prakash Shinde a/w Mr. Rohan Agrawal, Ms. Faiza Dhanani, Advocates i/b MDP Partners.

For the Corporate Debtor: Mr. Ashish Kamat a/w Mr. Subir Kumar, Mr. Sagar Shetty, Mr. Indrajeet Hingane, Advocates.

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. Bank of India (hereinafter called the 'Petitioner') has sought the Corporate Insolvency Resolution Process of Housing Development and Infrastructure Ltd.(hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 04.12.2018 in repayment of facilities granted to the Corporate Debtor to the extent of Rs. 522,29,06,768/-, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner had subscribed to the issue of Non-Convertible Debentures (NCD's) offered by the Corporate Debtor to the extent of Rs. 248,63,00,000/-. Further the Petitioner extended Term Loan facility to the extent of Rs. 20,66,59,553/- to the Corporate Debtor. The Corporate Debtor enclosed the following documents in support of the above said financial debts:

- a. Copy of application form of the Petitioner for the subscription of NCD of Rs. 250 crores dated 17.01.2010.
  - b. Copy of Debenture trust Deed dated 22.03.2010.
  - c. Copy of Debenture trust Deed dated 17.08.2010.
  - d. Copy of Letter of the Corporate Debtor dated 02.06.2010 setting out the details of Rs. 1150 crores issued by them and the confirmation of Rs. 250 crores allotted to the Petitioner.
  - e. Copy of application form of the Petitioner for the subscription of NCD of Rs. 100
  - f. crores dated 09.07.2010.
  - g. Copy of Letter of the Corporate Debtor dated 09.07.2010 requesting for disbursement of Rs. 100 crores towards Rs. 100 crores, 12% NCD.
  - h. Copy of Letter of the Petitioner for the Investment of Rs. 25 crores 12 NCD dated 14.06.2011.
  - i. Copy of application form of the Petitioner for the subscription of NCD of Rs. 47.5 crores dated 19.09.2012.
  - j. Copy of Notice issued by IDBI Trusteeship Services Ltd., under Section 13(2) of SARFAESI Act issued by the Debenture Trustee on behalf of all the Debenture Holders dated 08.07.2015.
  - k. Copy of Certificate of Registration of Charges dated 15.04.2010, 01.09.2010 and 18.05.2009.
  - l. Copy of Financial Contracts mentioned in Schedule I –NCD Facilities.
  - m. Copy of Financial Contracts mentioned in Schedule II – Term Loan Facilities.
  - n. Copy of CIBIL Report dated 10.04.2018.
  - o. Copies of Entries in a Banker's Book dated 30.11.2018 and 12.12.2018 in accordance with the Bankers Book Evidence Act, 1891.
  - p. Copy of audited financial statements of the Corporate Debtor.
3. The Counsel for the Petitioner submitted that the Corporate Debtor with a view to enhancing the long term resources of the Company for financing its Working Capital requirements requested the Lenders to subscribe to the Debentures. The Lenders by their respective Letters of Intent agreed to subscribe 1,15,000 NCD's of Rs. 10,00,000/- each aggregating to Rs. 1150 crores, and Green Shoes Option of Rs. 517 crores. Out of the said

Debentures the Petitioner has subscribed to the extent of Rs. 422.50 crores. The Debentures were secured, inter alia, by mortgage of the properties being land situated at village Kasrali, Taluka Vasai, Dist. Thane, admeasuring about 173.40 acres belonging to Privilege Power & Infrastructure Pvt. Ltd.

4. Accordingly, Debenture Trust deed dated 22.03.2010 and other security documents were executed. An amount was disbursed by the Petitioner, however, there is default in debt servicing by the Corporate Debtor. Despite repeated requests and reminders the Corporate Debtor failed to repay the dues and the account was classified as NPA.
5. On 08.07.2015, IDBI Trustee, the trustee of the debenture holders issued notice of demand on behalf of the Debenture Holders including the Petitioner for an amount of Rs. 616,91,40,462.26/-. However, till date the Corporate Debtor has failed to pay in terms of the demand. Hence, on 06.12.2016, the IDBI Trusteeship Services Ltd. Took possession of the mortgaged properties.
6. The Counsel for the Petitioner further submitted that the Petitioner filed a petition under Section 7 of Insolvency and bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) before this Tribunal viz. CP No. 1788 of 2018. During the pendency of the said petition and before the admission of the petition, the Corporate debtor proposed for settlement of the debt and accordingly communicated the acceptance of the OTS vide letter dated 31.08.2018. pursuant to the OTS the said petition was withdrawn. Thereafter, the corporate Debtor failed to pay in terms of the OTS. The Corporate debtor's post dated cheques issued were also dishonoured due to insufficiency of funds. Hence the Petitioner vide letter dated 04.12.2018 revoked the OTS and called upon to pay Rs. 522.30 crores which is inclusive of interest.
7. The Petitioner enclosed the statement of account for the loan wherein it was found that the amount claimed in the Petition is as per the statement of account. The statement of account further reveals that there are defaults in payment of dues.
8. On various occasions various opportunities had been given to the Corporate Debtor to repay its creditors. However, despite these opportunities the Corporate Debtor failed in making the payments. In fact, on 04.07.2019,

during the court proceedings, the Corporate Debtor accepted its default. Relevant portion of the order has been reproduced below -

*"Both Side Present. In view of the failure on the part of the Corporate Debtor in honouring the undertaken given to the Court by the Senior Counsel and later on even after affording an opportunity to the Corporate Debtor to discuss the issue with the bank and to settle the matter amicably. The Corporate Debtor expressed his inability to pay on the very same day and requests 3 weeks' time to make the payment. In view of the express admission made by the Corporate Debtor as regards to the debt as well as the default on their part, the matter is reserved for orders"*

9. The above facts shows that the Corporate Debtor defaulted in making the payment towards the liability to the Petitioner and the petition deserves to be admitted.

10. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (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 (SARFAESI Act);

- (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.
- (II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 20.08.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints, Mr.Abhay Narayan Manudhane, having office at 201, ShubhAshish, 129, Model Town, Andheri (west), Mumbai – 400 053;having Registration No. IBBI/IPA-001/IP-P00054/2017-18/10128 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. Accordingly, this Petition is admitted.

12. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-  
V. Nallasenapathy  
Member (T)

Sd/-  
Bhaskara Pantula Mohan  
Member (J)