



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP No. (IB) 04/ALD/2020

IN THE MATTER OF:

(An application under Section 7 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF:

M/s Neon Vincom Pvt. Ltd

....Applicant/Operational Creditor

Vs.

M/s Colorcity Homes Pvt. Ltd.

...Respondent/Corporate Debtor

Order reserved on 10.02.2023

Order pronounced on 02.03.2023

CORAM:

Sh. Praveen Gupta

: Member (Judicial)

Sh. Ashish Verma

: Member (Technical)

Appearances (via Video Conference)

Sh. Yash Tandon along with Sh. Ankit Sharma, Adv.

: For the Applicant/ Operational Creditor

Respondent

: Ex-parte

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ORDER

1. The present application has been filed initially on 03.12.2019 by the Financial Creditor, namely **M/s Neon Vincom Pvt Ltd** being Applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against the Corporate Debtor, namely **M/s Colorcity Homes Pvt Ltd** being Respondent. However, later during the course of hearing on 10.08.2022, the Applicant’s learned counsel requested for amending the application by mentioning the date of default specifically in Part IV of application in Form 1 and filing an affidavit to that effect. The compliance Affidavit alongwith Amended Application in Form 1 has been filed on 27.08.2022.
2. It is stated that Corporate Debtor had approached Financial Creditor and requested to invest in the ongoing project of the Corporate Debtor situated at 3/4/Park Town Aditya World City NG-24, Near Wave City, Ghaziabad. The Corporate Debtor gave assurance to the Financial Creditor that they will refund back their money along with interest @24% p.a within one year and in any case, the money is not refunded back, the built-up and complete unit of the said project equivalent to the value of the principal amount alongwith interest will be given to the Financial Creditor.
3. In view of the assurance made by the Corporate Debtor, the Operational Creditor agreed to invest in the aforesaid project and paid an advance amount of Rs.1,80,00,000/- in three trenches dated 20.12.2014, 25.12.2014, and 16.01.2015 respectively. The said amount is also reflecting in the bank statement of the Applicant which is Annexed as Annexure A-3 from pg No. 20 to pg. No.23 of the amended Application.

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4. Subsequently, the Financial Creditor asked the Corporate Debtor to refund his amount alongwith interest @ 24% p.a as there was no progress made in the project of the Corporate Debtor and no construction work had started. It is further stated that the amount infused by the Financial Creditor is being reflected in the audited balance sheet of the Corporate Debtor for the year 2017. According to the Financial Creditor, the said finances were infused for the time value of money.
5. This Tribunal vide its order dated 21.01.2020 issued notice to the Respondent/Corporate Debtor. Subsequently, this Tribunal in its order dated 04.03.2020 recorded that the affidavit of service has been filed by the Applicant/Petitioner, wherein it was stated that the notice which was sent to the Respondent by registered post, got returned back with the endorsement 'undelivered' and notice sent through email, has not bounced back however, none on behalf of the Respondent had put in appearance. Subsequently, this tribunal vide order dated 02.07.2021 proceeded Corporate Debtor Ex-parte.
6. We have heard the Ld. Counsel representing the Financial Creditor and perused the records. As the application filed by the Applicant for initiation of Corporate Insolvency Resolution Process (CIRP) as per the provision of Section 7 of the IBC has not been contested by the Respondent/Corporate Debtor, we have decided this application after examining all the particulars furnished by the Applicant in Part I, II, III, IV and V of the application as prescribed in Form 1 of Rule 4, sub-rule (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and looking to fulfilment of conditions as per the provisions of Section 7 and other relevant connected provisions of IBC for admission of the present

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application for starting CIRP of the Respondent/Corporate Debtor. In this regard, Hon'ble Supreme Court in its order dated 31.08.2017 in case of **M/s Innovative Industries Ltd. Vs. ICICI Bank & Anr (Civil Appeal No 8337-8338 of 2017)** has held that in the case of a Financial Creditor triggering the process U/s 7, default needs to be in respect of a financial debt owed to any Financial Creditor and adjudicating Authority is to be satisfied that default has occurred, and then the Application must be admitted unless it is incomplete. In this decision, it is also held that in the case of a Corporate Debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidences produced by the Financial Creditor to satisfy itself that default has occurred. The relevant part of this decision relating to provision of Section 7 of the IBC is reproduced as under:-

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is

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to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of

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such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

7. Before deciding about the admissibility of this application as per the provisions of Section 7 of IBC, first we examined the filing of this application being within limitation period or not. As per Limitation Act, filing of an application u/s 7 of IBC is to be within three years from the date of default. We find from the records and also as stated in Part IV of the application in Form 1, the date of default is 31.03.2017 i.e. the date on which unpaid closing balance of financial debt of Financial Creditor is shown in the Balance sheet of the Corporate Debtor and this amended application has been found to be filed on 03.12.2019 vide Diary No.2365. Thus, this application is well within time limit.
8. As regards the financial debt, for which default has occurred, it is declared in Sl. No. 1 of Part IV of the amended application in Form 1 that a total amount of Rs.1,80,00,000/- was disbursed as loan to the Corporate Debtor. Details of disbursement of this loan is supported by the Bank Statements of the Applicant-Financial Creditor maintained with Punjab National

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Bank, Civil Lines, Meerut Branch, and State Bank of India, Meerut Cantt. Meerut Branch annexed as Annexure A-3 at Sl. No. 7 of Part V of the Application in Form 1. As per the bank statement, the details of disbursement of loan by the Financial Creditor to Corporate Debtor is as under:

<u>S. No.</u>	<u>Date</u>	<u>Amount (Rs.)</u>	<u>Page No.</u> (relevant pages of amended application)
1.	22.12.2014	50,00,000/-	21
2.	30.12.2014	1,00,00,000/-	22
3.	16.01.2015	30,00,000/-	23

The above-captioned financial debt has also been found to be supported with the ledger account of the Corporate Debtor maintained in the books of the Financial Creditor and the Audited Balance Sheet of the Corporate Debtor for the F.Y. 2016-17 duly signed by its directors and statutory auditor, annexed as Annexure A-2 and Annexure A-5 respectively at Sl. No. 8 of Part V of the amended application in Form I. In this Balance-Sheet, while providing the details of the related parties transactions in Notes to Accounts, Rs. 1,80,00,000/- is shown in the name of the Financial Creditor at Sl. No. 8 as part of total amount of Rs.11,25,70,488/- declared as Loan and Advances under the Head of “Long Term Borrowings” of the said Balance Sheet. Thus, we find that this debt is an admitted debt duly reflected in the records of the Corporate

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Debtor also. As this financial debt remained outstanding, the Applicant-Financial Creditor computed interest amounting to Rs. 1,99,07,506/- as shown at Sl. No.2 of Part IV of the application in Form 1 and total amount claimed to be in default is shown at Rs.3,79,07,506/- including Principal amount of Rs.1,80,00,000/- and interest of Rs.1,99,07,506/-. We have also found that the Financial Creditor on account of failure of the Corporate Debtor to repay the said debt, served a recalling notice dated 15.05.2019, annexed as A-7 of the amended application for recalling the outstanding debt. However, no reply to said recall notice has been filed by the Corporate Debtor. We clearly find that the Corporate Debtor did not make any effort to settle the claims of the Financial Creditor and defaulted on repayment of financial debt. It has not only defaulted in repaying the amount of the financial debt but also defaulted on giving the built-up and complete units at the building construction project (for which the said financial debt was taken) equivalent to the value of the principal amount alongwith interest payable to the Financial Creditor in lieu of repayment of financial debt. Even during the course of proceedings before us, no authorised representative or any counsel on behalf of the Respondent Corporate Debtor appeared and hence, the Respondent is set ex-parte. Such failure on part of the Corporate Debtor clearly demonstrate that it is in default of repaying the financial debt.

9. After analysing the above facts, we find that the amount of debt infused by the Financial Creditor to the Corporate Debtor alongwith charging of interest for which total amount under default is shown at Rs.3,79,07,506/- in Part IV of the amended as well as original application, is on the basis of “time value of money” in terms of Section 5(8) of IBC. Based on the

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documents attached by the Applicant-Financial Creditor in Part V of Form 1, it has been clearly shown to us that the repayment of financial debt is under default and for its recovery, recall notice has already been issued by the Applicant-Financial Creditor. The application filed in Form 1 is also found to be complete in all respect after filing of Compliance Affidavit alongwith Amended Application. Therefore, we find this application by the Financial Creditor fit for initiating the Corporate Insolvency Resolution Plan (CIRP) against the Corporate Debtor.

10.As regards the Interim Resolution Professional (IRP), the Applicant/Financial Creditor proposed the name of Mrs. Hemi Gupta as IRP in Part III of the original as well as amended application in Form 1. Consent of the IRP Mrs. Hemi Gupta is annexed in Form 2 at pg No.65-68 in the present Application. The Law Research Associate, Mr. Sarvesh Shukla, has checked the credentials of said proposed IRP and there is nothing adverse against her, Therefore, we hereby appoint Mrs. Hemi Gupta, having Registration No. IBBI/IPA-002/IP-N00147/2017-18/10383 R/o 24, Medi Centre, Opp. Eves Petrol Pump, Hapur Road, Meerut, 250002, U.P Email: hemigupta@rediffmail.com, Mobile No. 9359911588, as IRP. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20, and 21 of IBC, 2016. Page 20 of 21 CP (IB) No.70/ALD/2021

11.In the given facts and circumstances, the present application being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence

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of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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 Securitization 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.
- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions
as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till 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.”

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12. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
13. We also direct the ex-management and promoters of the Corporate Debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The Interim Resolution Professional is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner.
14. We direct the Financial Creditors to deposit a sum of ₹1,50,000/- (Rupees One Lakh Fifty thousand Only) with the Interim Resolution Professional, to meet the expense to perform the functions assigned to him in accordance with Regulation 6(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors (CoC) as accounted for by the Resolution Professional (RP) on

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the conclusion of CIRP. CoC shall appoint RP at the earliest as per the terms of Section 22 of IBC.

15. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
16. The present petition is allowed and admitted accordingly. List the matter on 10.04.2023 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

02nd March, 2023

Priya Agarwal
(Stenographer)

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(Praveen Gupta)
Member (Judicial)