
(2019) 09 NCLT CK 0035

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. IB-450(PB) Of 2018

Nupur Finvest Pvt. Ltd.

APPELLANT

Vs

IVR Prime IT SEZ Pvt. Ltd.

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 5(8)(f), 7, 7(2), 7(5), 13(2), 14
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For
Corporate Person) Regulations, 2016 — Regulation 6, 32
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule
4, 4(2), 9(1)

Citation : (2019) 09 NCLT CK 0035

Hon'ble Judges : M.M. Kumar, CJ; Santanu Kumar Mohapatra, Member
(Technical)

Bench : Division Bench

Advocate : P. Nagesh, Dhruv Gupta, Shivam Mishra, Ranjana Roy Gawai,
Vasudha Sen, Ananya Chugh

Judgement

M.M. Kumar, CJ

1. The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent M/s. IVR Prime IT SEZ Pvt Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the petitioner-financial creditor is a Non- Banking Financial Company registered with the Reserve Bank of India.

2. The Corporate Debtor - M/s. IVR Prime IT SEZ Pvt Ltd. was incorporated on 15.10.2007 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U72300DL2007PTC169453.

3. It is submitted by the Petitioner that it had granted two loan facilities for a total amount of Rs. 3,02,00,000 to the respondent - corporate debtor vide Loan agreements dated 28.01.2016 and 30.03.2017 [Annexure - I (Colly)]. As per both the loan agreements the said loan had to be repaid in 24 monthly instalments along with an interest @ 17.50% per annum ("Schedule B" of the said loan agreements).

4. Further the Petitioner states that the loans were secured by hypothecation of 15 flats in the under construction township namely The Aranya being developed by the respondent-corporate debtor, by way of hypothecation statement dated 28.01.2016 and also by the guarantee agreement dated 28.01.2016 executed by Shri Anil Mithas, Smt. Madhu Mithas and M/s. Unnati Fortune Holdings Ltd. The same have been placed on record (Annexure I (Colly)). The post-dated cheques (PDCs) issued by the respondent - corporate debtor have been dishonoured and the same have been placed on record along with the return memos (Page 118 to 169). A demand notice dated 17.02.2018 and its corrigendum dated 24.02.2018 (Annexure I (Colly)) was sent by the petitioner to the respondent for repayment of outstanding amount that is due and payable.

5. The case of the Petitioners in a nutshell is that the total amount in default due and payable by the corporate debtor pursuant to both the said loan agreements is Rs. 3,42,01,213/-. The details of the transaction have been mentioned in Form 1.

6. The Financial Creditor has proposed the name of Mr. Kashi Viswanathan Sivaraman as the Insolvency Professional with the address Flat No. 204, Block-Menka, V3S Indralok, Plot No. GH-1, Nyay Khand-1, Indirapuram, Ghaziabad, Uttar Pradesh-201014. His registration number is IBBI/IPA-001/IP-P00900/2017-18/11497. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration (Annexure-1 in CA-862(PB)/2019).

7. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has given the details of the amount claimed in default and the date of the default.

8. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that the Loan was disbursed. On the record have been placed the loan applications, loan agreements, guarantee agreements and sanction letters along with the bank account statement. The petitioner- financial creditor has also attached the CIBIL Report of the respondent- corporate debtor (Annexure I (Colly))

9. A reply to the petition has been filed by one Mr. Shailendra Pratap Singh Sharma, being the Authorized Signatory of the Respondent- Corporate Debtor and also a Rejoinder to the Reply has been filed by the Petitioner-Financial Creditor.

10. In the Reply the Respondent-Corporate Debtor has raised objection to the petition and has questioned the material facts based on which the petition is filed. On that basis it is sought to be argued that the amount claimed in the petition is exorbitant and calculated arbitrarily.

11. The petitioners have outrightly denied the assertion of the corporate debtor and have clarified that the amount is calculated based on the various clauses of the loan agreement dated 30.03.2017 and the same was agreed upon by the corporate debtor. Copy of the current CIBIL Report of the respondent - corporate debtor is also annexed (Annexure 1 with the rejoinder).

12. The material placed on record confirms that the petitioner-financial creditor had disbursed money to the respondent-corporate debtor and subsequently it was secured by allotting fifteen units to the financial creditor. Though a considerable long period has elapsed even the principal amount disbursed has not been repaid by the respondent-corporate debtor as per the provisions of the loan agreements. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh.

13. In view of the aforesaid, we find that advancement of loan and default stand admitted. Even Otherwise there is overwhelming documentary evidence on record which support those findings.

14. 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.

15. 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 as discussed in detail in our Order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB-1039(PB)/2018).

16. After a reading of Section-7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

17. As a sequel to the above discussion, this petition is admitted and Mr. Kashi Viswanathan Sivaraman is appointed as the Interim Resolution Professional.

18. The judgment in this matter could not be pronounced earlier as the issue concerning Constitutional validity of explanation to sub section 8 (f) of Section 5 of the Code, 2016 was subject matter of challenge before Hon'ble the Supreme Court in a bunch of petitions. In the lead case titled as Pioneer Urban Land and Infrastructure Limited and Another v. Union of India &Ors. (Writ Petition (Civil)

No. 43 of 2019) the judgement has now been pronounced on 09.08.2019. We have gone through the judgement and find that the directions issued by Hon'ble the Supreme Court do not in any manner advance the case of the Corporate Debtor and the petition deserves to be admitted.

19. 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.

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 application under Section 7 of the Code.

21. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Kashi Viswanathan Sivaraman to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

22. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

23. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are leveled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

24. 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. Petitioner is also directed to provide a copy of the complete paper book to the IRP. 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.