

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH-VI
CP – (IB) - 314/PB/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016
and Rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

M/s Kaliber Associates Pvt. Ltd.

Through its Liquidator,
Mohan Lal Jain
B-1/12, 2nd Floor, Safdarjung Enclave,
The Bahi - 110029

...Petitioner/Financial Creditor

VERSUS

M/s LVS Estates Pvt. Ltd.

5 Rajsthani Udyog Nagar,
G.T. Karnal Road Delhi,
110033

...Respondent/ Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner:

Mr. Anirban Bhattacharya, Adv.
with Mr. Rajeev Chowdhary, Adv.

Counsel for Respondent:

Mr. Ankit Singal and Mr.
Samyak Jain, Adv.

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 02.07.2024

1. The present petition has been filed by M/s Kaliber Associates Pvt. Ltd, through the liquidator of Financial Creditor, Mr. Mohan Lal Jain, to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s LVS Estates Pvt. Ltd. in accordance Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default by the Respondent in repayment of a financial debt amounting to INR 3,00,00,000/- (Rupees Three Crores Only). The date of default in accordance with part IV of the Petition is 31.01.2019.

2. The details of transactions which resulted in the filing of the present application, as averred by the Applicant, have been briefly summarized as under -
 - i. That, the Applicant/ Financial Creditor is presently undergoing the Liquidation process vide order dated 02.01.2020 passed in C.A. No. 1524/C-II/ND/2019 in C.P. (IB) No. 228/2018 by the National Company Law Tribunal, New Delhi Bench-II whereby this Adjudicating Authority admitted an application filed by the Resolution Professional of M/s Kaliber Associates Pvt. Ltd. under Section 33(1) and Section 33(2) of the IBC for liquidation

of M/s Kaliber Associates Pvt. Ltd. The Applicant/ Financial Creditor is being represented by its Liquidator, Mr. Mohan Lal Jain.

ii. That on 12.10.2020 an Application bearing no. I.A. No. 4559/ 2020 in C.P. (IB) No. 228/2018 under Section 33(5) read with Section 35(1)(k) of IBC was filed before the NCLT, New Delhi Bench-II by the Liquidator of the Applicant seeking approval for institution of suit or other legal proceedings including filing of application under Section 7 of IBC against various borrowers including the Corporate Debtor herein. That vide order dated 01.12.2020 the NCLT, New Delhi, Bench-II allowed the said application and the Applicant/ Financial Creditor was allowed to institute any suit or legal proceeding against the defaulting borrowers before any appropriate forum.

iii. As per the Bank Statements of the Applicant/ Financial Creditor various loans and advances have been disbursed to the Corporate Debtor amounting to Rs. Rs. 3,00,00,000/- (Rupees Three Crores Only) the details of which have been tabulated as under –

Date as per the Bank Statement	Particulars	Bank Name	Account No.	RTGS No.	Amount (in Rs.)
23.09.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400		40,00,000
27.10.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH14300588612	75,00,000
13.11.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH14317188082	50,00,000

25.11.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH14329116194	50,00,000
13.12.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH14347497733	50,00,000
13.01.2015	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH10152003329	35,00,000

iv. Therefore, in total a sum of Rs. Rs. 3,00,00,000/- (Rupees Three Crores Only) was disbursed as loan by the Applicant/ Financial Creditor to the Corporate Debtor from 23.09.2014 to 13.01.2015.

v. That it was a short term loan given by the Applicant/Financial Creditor to the Corporate Debtor which was repayable on demand and accordingly, the first Demand Notice was issued by the Interim Resolution Professional of M/s Kaliber Associates Pvt. Ltd., Mr. Vinay Talwar vide letter dated 31.01.2019 whereby it was intimated to the Directors of the

Corporate Debtor that the records (i.e., as per the Financial Statements of the Applicant as on 31.03.2017) of the Applicant/ Financial Creditor, M/s Kaliber Associates Pvt. Ltd. reflected that a sum of Rs. Rs. 3.00,00,000/- (Rupees Three Crores Only) was due and payable by the Corporate Debtor to the Applicant/Financial Creditor and called upon them to confirm the balance payable and demanded payment of the outstanding balance Rs. 3,00,00,000/- (Rupees Three Crores Only) together with the interest.

- vi. That on 14.03.2021, the Applicant/ Financial Creditor submitted the details of the default committed by the Corporate Debtor to the Information Utility (IU) namely National E-Governance Services Limited and the said IU authenticated the details of the default on 30.03.2021.
- vii. In light of the aforesaid, the Corporate Debtor has failed to pay the financial debt therefore, the Applicant/ Financial Creditor is filing the present Application under Section 7, IBC for initiating CIRP of the Corporate Debtor. The amount of 'financial debt' claimed by the Applicant/ Financial Creditor in the present Application is Rs. 3,00,00,000/- (Rupees Three Crores Only) outstanding as on 18th January 2019 as per the

Provisional Financial Statement submitted by the Director of the suspended Board of the Applicant/Financial Creditor.

3. The Corporate Debtor has also filed its reply in which the multiple contentions were elaborated upon, the said contentions have been briefly reiterated as under –
 - i. That the LVS Estates Pvt. Ltd. / Corporate Debtor ("CD") is a private limited company, incorporated on 25.02.2005, having its registered office at 15, Rajsthani Udyog Nagar, GT Karnal Road, Delhi - 110033 and is engaged in the business of real estate. Its Shareholder-director, Vinod Kumar Gupta, has been duly authorized to file the present reply by Board resolution dated 22.11.2021.
 - ii. That, Vinod Kumar Gupta is the lawful owner of the agricultural land measuring approximately 6.213 hectare (approx. 15.5 acre) bearing Khasra no.571 and 809 situated in the village Harsingpur, Tehsil Aliganj Distt. Etah.
 - iii. Vinod Kumar Gupta entered into an Agreement to Sell dated 25.01.2011 ("said Agreement") with the Financial Creditor Kaliber Associates Pvt. Ltd. ("FC"), through its director Lalit Modi, with respect to the said land for a total consideration of INR 30,11,00,000/- (Indian Rupees Thirty Crores Eleven Lakhs

only). However, the FC had paid only an amount of INR 6,75,00,000/- (Indian Rupees Six Crores Seventy-five lakhs only). As agreed between the parties, the said payment has been made to Vinod Kumar Gupta and / or to the entities requested by Vinod Kumar Gupta.

- iv. The said payment of INR 6,75,00,000/- (INR Rupees Six Crores Seventy-five lakhs only) includes the payment to the CD of the alleged financial debt of INR 3,00,00,000/- (Indian Rupees Three Crores only) ("said amount"). As agreed between the parties, the said amount of INR 3,00,00,000 - (Indian Rupees Three Crores only) has been paid to the CD, on the request of Vinod Kumar Gupta in respect of the aforesaid Agreement.
- v. Accordingly, the said amount of INR 3,00,00,000/- (Indian Rupees Three Crores only) so received by the CD is a loan given by its shareholder-director Vinod Kumar Gupta (and not by FC) to the CD with necessary statutory compliances and is so reflected by the CD in its books.
- vi. It is, thus, submitted that there is no financial debt payable by the CD to the FC let alone any default with respect to repayment of the same by the CD.

vii. It is submitted that had the CD been made aware of the said details of payment, the CD could have clarified to the FC's liquidator about the details of the said Agreement and the inadvertent error of incorrectly incorporating the FC's name in the CD's balance sheet as on 31.03.2016. The same in turn would have avoided the present frivolous litigation.

4. We have heard the Ld. Counsel appearing for the Petitioner and the Respondent and perused the averments and documents placed on record filed by both the parties.
5. Consequent, to a perusal of the documents placed on record by the applicant and the respondent, pertaining to the present section 7 application. It is evident that the Respondent/CD admits that the contended amount i.e., the financial debt was transferred to the CD by the Applicant/FC in the form of multiple RTGS transactions, the aforesaid transactions have been listed as under –

Date as per the Bank Statement	Particulars	Bank Name	Account No.	RTGS No.	Amount (in Rs.)
23.09.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400		40,00,000
27.10.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH14300588612	75,00,000
13.11.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH14317188082	50,00,000

25.11.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH143291 16194	50,00,000
13.12.2014	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH143474 97733	50,00,000
13.01.2015	LVS Estates Pvt. Ltd.	Union Bank of India	349401010928400	UBINH101520 03329	35,00,000

6. The nature of the aforesaid payments has been contested by the Respondent/CD on the grounds that the said payment was made in pursuance of an agreement for sale of agricultural land between the FC and the CD, the said agreement was executed on 25.01.2011. The CD alleges that the said payment was made in order to defray the expenses in accordance with the obligations laid out in the aforesaid contract. Additionally, it is pertinent to note that it has been admitted by the Respondent/CD that the amount transferred by the Applicant/FC was deemed to be the Earnest Money, as the same was forfeited in 2016 owing to the lack of payment of the whole amount.
7. Upon perusal of the aforementioned agreement, it is important to note that the buyer i.e., the Applicant/FC was obligated to discharge the requisite amount in accordance with the payment

schedule laid down in the aforesaid agreement. The said schedule has been provided as under –

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As per the kisan bahi dated 12/02/1996.

SCHEDULE of payment "B"

Details of Payment made as earnest Money:-

Kaliber Associates Pvt. Ltd. through its Director Sh. Lalit Modi of Rs 1,00,00,000/- favoring Swagat Buildtech Pvt. Ltd. dated 25/01/2011.

Details of Balance Earnest Money Payment

Add. on or before :-
31/03/2012 – Rs. 2,00,00,000/-
(Total= Rs. 3,00,00,000/-)
31/03/2013 - Rs. 4,51,00,000/-
(Total= Rs. 7,51,00,000/-)

Details of Balance Payment

Rs. 22,60,00,000/- on or before 31/03/2016
(Total= Rs. 30,11,00,000/-) full and final

For Kaliber Associates Private Limited
Lalit Modi
Director

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8. However, the transactions which have been deemed to be the Financial Debt by the Applicant/FC, in the present application were carried out between 2014 and 2015 whilst the transactions pertaining to the Earnest Money Deposit were to be concluded on

or before 31.03.2013 in accordance with the payment plan laid down aforementioned agreement.

9. Additionally, it is pertinent to note that the consideration that was to be paid in lieu of the aforementioned Agricultural Land, in accordance with the contract was paid to a separate entity named M/s Swagat Builtech Private Limited.
10. Moreover, the said consideration for the sale of the agricultural land was not reflected in the balance sheet of the Respondent/CD, rather an amount of INR 3,00,00,000/- (Rupees Three Crores Only) was reflected as outstanding and to be payable by the CD to the FC in the financial statements as on 31.03.2018 of the Respondent/CD.
11. Consequently, it can be concluded that the aforesaid transactions i.e. the money paid by the FC to the CD by the virtue of RTGS transactions, were not carried out in pursuance of the agreement to sell the agricultural land.
12. A mere reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The

Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application.

13. The Hon'ble NCLAT in the matter of Noil Christuraj v. SBI, 2024 SCC OnLine NCLAT 485 (Decided on April 18, 2024) held as under

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55. It is relevantly pointed out that an 'Adjudicating Authority'/'Tribunal'. is having a limited/restricted role, to determine, whether the 'Application', is 'complete' and whether, there is 'any Debt' or 'Default'.

57. The 'proceedings', under the I & B Code, 2016 are 'summary in character'. In fact, the said proceedings, are not like 'Civil Litigation', to be determined by a 'Competent Court of Law'. Ofcourse, the 'Corporate Debtor', is entitled to point out in a 'CIRP' proceedings, before the 'Adjudicating Authority'/'Tribunal', that the 'Default', has not occurred. A 'Debt', may not be due, if it is 'not payable in Law' or 'on facts'.

59. It is vital that the 'Stakeholders'/'Parties', in IBC Proceedings, are not permitted, to abuse, the legal process, by indulging in dilatory tactics. No wonder, the 'Speed', is the essence of I & B Code, 2016. For an 'Admission' of an 'Application/Petition', in a given 'Legal Proceedings', initiated by the 'Petitioner'/'Financial Creditor' (u/n 7 of the 'Code'), the two qualifications are required to be seen by the 'Adjudicating Authority'/'Tribunal' (1) 'Existence of Debt' and (2) 'Date of Default'.

14. Further, the Hon'ble Supreme Court in the matter of *M. Suresh Kumar Reddy v. Canara Bank*, (2023) 8 SCC 387 it was held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7 of the IBC, 2016. The relevant extract of the aforesaid judgement is reproduced below -

11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

3. Definitions.—In this Code, unless the context otherwise requires—

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

15. Additionally, it has been opined by the Hon'ble Supreme Court that the role of the Adjudicating Authority is confined to establishing that the a Financial Debt exists and there has been a default against the corresponding debt in E S Krishnamurthy & Ors. Versus M/s Bharath Hi Tech Builders Pvt. Ltd. (Civil Appeal No 3325 of 2020). The germane excerpt from the said precedent has been reiterated as under –

“The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5).”

16. We are satisfied that the present application is complete in all respects and the applicant Financial Creditor is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has been default in payment of the Financial Debt which is duly admitted by the Corporate Debtor.

17. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply

to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

18. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Gagan Gulati for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00893/2019 - 2020/12832. The proposed IP has a valid AFA. Therefore, this Adjudicating Authority, appoints, Mr. Gagan Gulati having registration number IBBI/IPA-002/IP-N00893/2019 -2020/12832 (Email – advocategulati@gmail.com), to act as Interim Resolution professional in the matter. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code.

19. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Gagan Gulati 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 one week from the date of receipt of this order by the Financial Creditor.

20. 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 Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

21. 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) of the Code. 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 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.”

22. 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. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

23. 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 committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Let copy of the order be served to the parties.

-SD/-
(Rahul Bhatnagar)
Member (Technical)

-SD/-
(Mahendra Khandelwal)
Member (Judicial)