

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 47/CB/2023

In the matter of:

An application under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Sambandh Finserve Private Limited, (Formerly known as Modline Build-Cap Private Limited), an existing company within the meaning of the Companies Act, 2013, having its registered office at Plot No. "O"- 4/9, Civil Township, Panposh, Area 7 & 8, Rourkela- 769 004, Dist- Sundargarh, Odisha.

... Corporate Debtor/Corporate Applicant

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Kaushalendra Kumar Singh : Member (Technical)

Appearances (through hybrid mode):

For the Petitioner : Mr. Anupam Das, Adv.
Mr. Sabyasachi Panda, Adv.
Mr. Debaprasad Mishra, Adv.

For Intervenor Financial creditor No.13 : Ms. Annapoorna.S Adv.
For Intervenor Operation creditor No.2: Mr. Abhishek Raman. Adv.
For Intervenor Income Tax : Mr .C.M.Singh.Adv.
For Financial Creditors. 4,16,34, and 39. : Mr. Ramachandra Panigrahy Adv.

Order pronounced on: 06.05.2024

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ORDER

1. This application is filed under section 10 of the Insolvency and Bankruptcy Code, 2016 (“**IB Code, 2016**”) by the Corporate Person i.e., **SAMBANDH FINSERVE PRIVATE LTD** for initiation of its own Corporate Insolvency resolution Process (“**CIRP**”) on a ground that it is unable to pay the debt of various Financial Creditors amounting to Rs 635,96,66,879/-. The date of default is stated to be 24.07.2023. After adjustment the default loan amount which became Rs 335,09,59,997/-, the principal amount without accruing interest.

2. **Brief facts of the petition as follows:** That, the Corporate Debtor i.e, Sambandh Finserve Pvt. Ltd has defaulted the Loan amount of Rs 635,96,66,879/- from 39 financial creditors and was registered with Reserve Bank of India (RBI) as a NBFC MFI for providing Micro finance to communities and people from lower strata and was formerly known as Modline Build-Cap Private Ltd. and changed its name from Modline Build Cap Pvt Ltd to Sambandh Finserve Pvt. Ltd w.e.f. 17.06.2010 which is incorporated under the Companies Act, 1956. The purpose of company was to borrow money from different financial institution and to use the fund to provide Customized lending and financial solution to low-income population. The financial health of the Corporate Debtor turned sour owing to an internal corporate fraud which was reflected in October 2020 but meanwhile, some financial creditors have adjusted the fund of the Corporate Debtor available in the form of FDR in current account which was maintained by them. The principal amount of loan in default after adjustment is Rs 335,09,59,997 as on 24.07.2023 without accrued interest. Now, the corporate debtor is having book debts aggregating Rs. 45.36 cr from the genuine clients whereas all these debts are having high DPD and is therefore difficult to recover keeping in mind the fact that the recovery made by the Corporate Debtor merely varies between Rs 2 lakhs to Rs. 3 lakhs per month. After the Internal Corporate Fraud, the Board took steps to rationalize the affairs of the Company to arrest further damage by giving instruction to all banks where the corporate debtor was maintaining the current account. Mr. Deepak Kindo, was an ex-MD and CEO who perpetrated the fraud in the company

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and subsequently removed from the Board later in February, 2021 with another director, who has also committed fraud by having connivance with Mr. Deepak Kindo. Later on, the Board appointed Mr. Anadi Charan Sahu, Ex- GM, SIDBI as Administrator for rationalizing the manpower, expenses and maintaining transparency in financial transaction with intimation to all lenders and directors almost on a day-to-day basis. On 17.09.2021 the RBI cancelled the Certificate of Registration (CoR) and all the activities have been stopped from that date except the collection of dues from the clients through an outside agency appointed by the Board w.e.f. 01.12.2020. The Collection of debts which was about Rs 4.5 to Rs. 5 crores at the initial stage in October to December, 2020 gradually reduced to almost Rs 2-3 lakh per month although the outstanding debt is still around Rs 50 cr with more than 40,000 clients.as per now there is no business activity and recovery of dues from the client's turnover of the corporate Debtor is too low to continue operation. SIDBI, as the lead lender, attempted to settle dues through an inter-creditor agreement but failed. SIDBI filed a petition for Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code (IBC) in CP(IB) No 42/CB/2023.The petition was dismissed by the tribunal on the grounds of the specific bar provided in the first proviso to Section 10A of IBC due to the date of default falling within a specified period. The dismissal was confirmed by the NCLAT, but SIDBI was given liberty to file a fresh application. SIDBI made a second attempt under Section 7, which was also dismissed. The Corporate Debtor's board decided to file petition under Section 10 of IBC after passing a necessary special resolution. No other creditor has initiated CIRP proceedings to date.

3. After taken the petition on file ordered notice to the creditors named in the petition. After the receipt of notices, the financial creditor No.13. Habitat Micro Build India Housing Finance Company Pvt.Ltd filed an intervention application IVN Pet. No 7/CB/2023, operational creditor No.2.M/s. Dvara Solutions Private Limited filed an intervention application IVN Pet. No. 8/CB/2023. These two creditors opposed the application, both the petitions were allowed and they were allowed to file their written submission and heard their oral arguments. Financial creditors No.16, IDBI Bank, No.34.Small Industries Development Bank of India

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and No.39 Frankfurt School Financial Services expressed their no objection in writing to admit the petition.

4. The intervenors opposed the petition stating that they have obtained Arbitration awards, but this petition has been filed to evade the payments in accordance with awards and to save the erstwhile Board of Directors of petitioner company. On the petitioner side denied these accusations and relied upon the NCLAT order passed in *M/S Uni green Global Private Limited vs Punjab National Bank and others 2017 SCC Online 610*, and argued that UCO Bank has initiated proceeding under section 13(2) of SARFAESI Act 2002, proceedings initiated by the Banks to recover the amount also pending before the DRT, since the debt and default are exist the petition to be admitted.

5. In this case before deciding whether the petitioner has complied the requirements of section 10 IBC 2016 to admit it into CIRP, we have to see whether petition filed under section 10 IBC is maintainable because of the defence taken by the Financial Creditor No.13. It is argued on the intervenor side that petitioner being Financial service provider the petitioner is excluded from the definition of Corporate person hence this petition is not maintainable.

6. It is admitted fact that the petitioner company is NBFC registered with Rserve Bank of India and carried on financial service and comes under the definition of Financial service provider under section 3(17) of IBC 2016 as such the petitioner is excluded from the definition of corporate person as defined under section 3(7) of IBC 2016. The question is no more integra that no petition under Chapter II of IBC 2016 is maintainable against the financial service provider. In this regard the Hon'ble NCLAT in **Saumil A. Bhavnagri Versus Nimit Builders Private Limited and Another**" 2019 SCC OnLine NCLAT 1312, in para – 7, the held as follows:

"This Bench finds itself in agreement with the law as explained by the Division Bench of this Tribunal (to which one of us – Justice A.I.S. Cheema was also Member). The definition of Corporate Person in Section 3(7) of IBC specifically provides that it shall not include "any financial service provider". Considering the Certificate issued by

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the Reserve Bank of India and also documents as placed on record by the Appellant – Corporate Debtor, we have no hesitation to hold that the Corporate Debtor in the present matter on date of Application being financial service provider, the provisions of IBC could not have been invoked against the Corporate Debtor. It would not be in the realm of Adjudicating Authority and thus, for this Tribunal to go into the details whether the conditions attached have been followed or not by the NBFC as held in the matter of HDFC (supra). If there is any violation of conditions, the aggrieved person may bring it to the notice of RBI to look into the same. According to us, whenever the Corporate Debtor demonstrates that it is financial service provider and supports the claim with evidence by Company Appeal (AT) (Ins) No.346 of 2020 12 Certificate by Reserve Bank of India, it is appropriate for the Adjudicating Authority to lay off its hands from such Corporate Debtor considering the definition of “Corporate Person”, under Section 3(7).”

7. This is reiterated by Hon’ble NCLAT and NCLT in the following citations.

(i) Company Appeal No.26/2019 Housing Development Finance Corporation Ltd v. RHC Holding Private Limited.

(ii) Company Appeal No.32 and 50 of 2018 Randhiraj Thakur v. M/S Jindal Saxena Financial Services in Company and

(iii) Company Appeal (AT) (Ins) No.346 of 2020 dated 18.03.2021 Gyanchand Mutha Shareholder of Arkay International Finsec Limited vs. M/s. Aditya BirlaMoney Limited, Indian Rayon Compound, Veraval, Gujarat and another.

(iv) The Principal Bench of NCLT Delhi held in C.P.No.187/PB/2023 dated 11.07.2023 Ligare Aviations Ltd vs Religare Enterprises Ltd

(v) NCLT No.IV Delhi IB/63/ND/2023 Utsav Securities Private Limited Versus Transnational Growth Fund Ltd. dated 29.08.2023.

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8. There is no pale of controversy that the petitioner is a financial service provider, Registered with Reserve Bank of India, accordingly excluded from the definition of corporate person as defined under section 3(7) of IBC 2016 in consequence no CIRP can be initiated under section 7,9 and 10 of IBC 2016. Further as per the section 227 of IBC 2016 the Regulator RBI alone can initiate CIRP proceeding against the petitioner under the provisions of Insolvency and Bankruptcy (Insolvency and Liquidation proceedings of financial Service Providers and Application to Adjudicating Authority Rules 2019 .

9. The defence taken by the petitioner is the petitioner was financial service provider registered with Reserve Bank of India but subsequently the Reserve Bank of India cancelled the Registration by letter dated 16.09.2021 Annexure R. After the cancellation of registration, the petitioner comes under the purview of Corporate person as defined under Section 3(7) of IBC 2016 hence this petition presented on 21.08.2023 after the cancellation of registration is valid.

10. The Reserve Bank of India by letter dated 16.09.2021 cancelled the registration of petitioner and directed it not to carry on any NBFC business however in par 3 of the letter it is made clear that the petitioner company still continues to be governed by the provisions of RBI Act 1934 and directed to submit yearly returns. This shows that even though the petitioner company is restrained from carrying on NBFC business but it has to act as per the direction of RBI. At the time of taking loan/debt from the creditors and committing default the petitioner is Financial service provider and continues as such. The status of "Financial service provider" is not ceased because of cancellation of registration.

11. The identical question was recently answered by the *NCLT-Hyderabad in CP(IB)No.23/10/2022 Asmitha Microfin Limited vs Reserve Bank of India by order dated 12.02.2024* held in para 16 as follows:

16. On perusal of the documents, we find that applicant was having a valid NBFC license and thus was a financial service provider, on the date of lending by financial creditors as well as on the date of default by the applicant. These two dates are very important as cause of actions for filing this application arose on these two dates i.e creation of debt

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and in turn default in paying that debt (debt and default) . From these facts, we draw a conclusion that applicant beyond doubt was a financial service provider on the dates when cause of actions arose for filing this application, and therefore is barred for filing section 10 application. ... and in para 21

21.Finally , on analyzing all the facts as discussed above , we find that beyond doubt the petitioner was FSP as on the date of credit facilities sanctioned by the financial creditors and also on the date of default by petitioner and even as on date also its activities continue to be the same and still it is regulated by RBI.

12. In the circumstances it is concluded that the petitioner is a Financial service provider and thus stand excluded from the definition of corporate person as therefore Chapter II of IBC 2016 not applies accordingly, this petition filed under section 10 of IBC is not maintainable hence this petition is **Dismissed**.

13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, the 06th day of May, 2024.

Subrat_LRA/ Supriya_P.S.