

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP(IB)/1142/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

Aditya Birla Finance Limited

[CIN: U65990GJ1991PLC064603]

...Financial Creditor

v/s.

Narang Developers Private Limited.

[CIN: U45200MH1990PTC058917]

...Corporate Debtor

Order Delivered on 28.03.2024.

Coram:

Ms. Anu Jagmohan Singh

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Rohit Gupta a/w

M/s. Ashrita Anand

Chindarkar i/b Katariya

&Associates, Ld.
Counsel.

For the Corporate Debtor:

Mr. Amir Arsiwala a/w
Ahmed Chunawala, Ld.
Counsel .

ORDER

1. This is an application bearing CP (IB) No. 1142/MB/C-IV/2023 filed by Aditya Birla Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Narang Developers Private Limited , Corporate Debtor claiming total default of Rs.19,84,91,191.97/- as on 05.08.2023. The Date of NPA is stated to be 16.06.2019 and the Date of Default is stated to be 15.03.2020 in the Part-IV of the Petition. The date of default as specified in NesL Report (as there were 2 loan sanctioned 2 reports are filed with different date of default) i.e. 14.09.2019 and 14.07.2019. The Petition is filed on 16.11.2023.

2. The submissions of the Financial Creditor are as follows:

- 2.1. The Applicant is a company incorporated under the Provisions of the Companies Act, 1956 and is a Non-Banking Finance Company registered with the Reserve Bank of India carrying on business of providing loan facilities under various schemes to its customer. The Applicant is the Financial Creditor as defined under the Code.

2.2. The Corporate Debtor is a company incorporated on 9th November 1990 under the Companies Act, 1956 carrying out the business of real estate development and related businesses. The Corporate Debtor had availed Loan Facilities from the Financial Creditor.

2.3. At the request of the Corporate Debtor, the Applicant had sanctioned a Loan facilities of Rs. 10,00,00,000/- (Rupees Ten Crore Only) and Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) aggregating to Rs. 11,50,00,000/- (Rupees Eleven Crore Fifty Lakh Only) (“**Said Finance Facility**”) to the Corporate Debtor subject to terms and conditions as stipulated in Sanction Letters dated 19.09.2016 and 04.12.2018 and the Facility Agreement dated 29.09.2016 and Supplementary Facility Agreement dated 07.12.2018. The entire amount of Rs. 11,50,00,000/- (Rupees Eleven Crore Fifty Lakh Only) was disbursed to the Corporate Debtor by the Applicant. The Applicant had maintained two separate Loan Accounts being Loan Account No. ABFLMUMLAP0000003433 and Loan Account No. ABFLMUMLAP00000038261 in respect of the said Finance Facility.

2.4. An Indenture of Mortgage dated 17.10.2016 was executed by Mortgagers and the Corporate Debtor as the Borrower in

favour of the Applicant creating security interest over the secured asset mentioned therein.

2.5. On account of the default in repayment in both accounts, the Loan Accounts were classified as 'Non Performing Asset (NPA)' on 16.06.2019. The Applicant issued a Demand Notice dated 05.07.2019 under Section 13(2) of the Securitisation and Restructuring of Financial Asset and Enforcement of Security Interest Act, 2002. ("SARFAESI Act") r/w Corrigendum dated 17.07.2019 calling upon the Corporate Debtor to pay an aggregate amount of Rs. 10,90,83,523/- and interest till 01.07.2019 & 21.06.2017.

2.6. The Corporate Debtor by its letter dated 10.02.2020 offered to pay Rs. 2,15,83,343/- (Rupees Two Crore Fifteen Lakh Eighty Three Thousand Three Hundred and Forty Three Only) on or before 15.03.2020, towards the overdue in respect of the said Finance Facility and requested to upgrade the account from NPA to standard. The Corporate Debtor also forwarded a cheque of Rs. 30,00,000/- (Rupees Thirty Lakh Only) as upfront payment.

2.7. The Financial Creditor/Applicant vide its Letter dated 13.02.2020 r/w Letter dated 24.02.2020 agreed to regularize the Loan Account of the Corporate Debtor on payment of the total overdue amount to the tune of Rs. 2,38,83,343/- (Rupees Two Crore Thirty Eight Lakh Eighty Three

Thousand Three Hundred and Forty Three Only) on or before 15.03.2020 in the manner and subject to the terms and conditions as set out therein.

2.8. The Corporate Debtor had made a further payment of about Rs. 70,00,000/- (Rupees Seventy Lakh Only) upto 04.03.2020 and failed to make the balance payment towards the overdue. Hence default occurred on 15.03.2020.

3. The submissions of the Corporate Debtor are as follows:

3.1. The Financial Creditor as claimed is not a Financial Creditor of Narang Developers Private Limited but of M/s. Csango Industries Private Limited. The Loan was sanctioned and disbursed to the M/s. Csango Industries Private Limited and not the Corporate Debtor viz, Narang Developers Private Limited. The Corporate Debtor had never executed the mortgage deed and given a financial security of the immovable property to the applicant and it further submits that the Mortgage Deed was given by the other Corporate entities. The Respondent Further submits that disbursement is the main framework of section 5(8) of the Code and its sub-clause (a) to (i) does not say co-borrower. It is further submitted that ‘ *financial debt* ’ is limited only to the transactions enumerated thereunder and its coverage cannot be enlarged while interpreting provisions.

3.2. That the Stamp duty not paid on Facility Agreement hence the document cannot be relied upon.

3.3. That the date of default falls under the Section 10A period as the default is mentioned as on 15.03.2020 that the applicant has deliberately misguided and concealed the fact about the payment which was received by them on 01.05.2021.

3.4. That the applicant has taken over the physical possession of the mortgage properties in respect of the default of Csango Industries Private Limited and has far more value than debt.

Findings

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1. This bench observed that the facility agreement dated 29.09.2016 is duly executed by the Borrower as well as the Co-Borrower, therefore, the Corporate Debtor cannot at this stage contend that the debt is not a financial debt as it is a settled law that the liability of borrower and co-borrower is co-extensive.

4.2. This bench notes that vide letter dated 10.02.2020 the Corporate Debtor has acknowledged the outstanding debt. Moreover, the Corporate Debtor has also made part payments in furtherance of the debt. Considering the

aforsaid facts, we hold that the defence of the Corporate Debtor on this ground holds no merit.

4.3. As per the contention raised by the Corporate debtor regarding the loan documents not being sufficiently stamped, it is a trite law that the question of insufficiently stamped loan document is not relevant while adjudicating upon the admissibility of a Petition under section 7 of the Code. This position is also settled in *Spicejet limited v/s Credit Suisse AG* [2022 SCC online Mad 112], wherein Hon'ble Madras High Court has held as:

“... the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence cannot be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected.”

4.4. Further the Corporate Debtor has raised a defence that the date of default falls under the Section 10A period. The

Section 10A of the Code provides that “*no application u/s 7, 9 and 10 shall be filed for any default arising on or after 25.03.2020 till 24.03.2021*”. In the present case the date of default has not occurred between the stipulated period therefore the contention raised by the Corporate Debtor has no substance.

4.5. This bench notes that, the date of default as specified in part IV of the petition is 15.03.2020. Accordingly, the limitation would ordinarily expire on 14.03.2023. The date of filing of the present petition is 16.11.2023. However, the bench notices that the Corporate Debtor has made a part payment against the loan on 01.05.2021 and accordingly a fresh period of limitation will be computed from 01.05.2021. Considering the aforesaid part payment and corresponding renewal of cause of action, the limitation period stands extended. The captioned petition is therefore fit for admission.

5. The factum of existence of financial debt and its default stands proven on record. It has also been established that the petition is within time. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor.

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6. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

7. The Petition bearing CP (IB) No. 1142/MB/C-IV/2023 filed by Aditya Birla Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Narang Developers Private Limited , Corporate Debtor is **Admitted**.
- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
 - (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) The bench hereby appoints **Mr. Rakesh Bothra**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P-01758/2019-2020/12675** and email- **ip.rakeshbothra@gmail.com** . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the

applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
28.03.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)