



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.113/BB/2023

Under Sec.7 of IBC, 2016

R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s Aditya Chokshi Family Trust

606, Abhijeet Building-1,
Near Mithakahali Six Roads,
Ellisbridge, Ahmedabad -380006

....Petitioner

Versus

M/s SL Residential Layout Private Limited

Having its registered office at
44/1, 8th Main Road, RMV Extension,
Sadashivnagar, Bangalore 560080

...Respondent

Order delivered on: 13.09.2024

Coram:

1. Hon'ble Shri K Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present/Counsels Present:

For the Petitioner : Shri Saji P. John

For the Respondent: Shri Sushant Kareer

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 04.08.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC/Code'), r/w, Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 by Aditya Chokshi Family Trust (for brevity "Financial Creditors/Petitioners") inter alia seeking Corporate Insolvency Resolution Process in respect of M/s SL Residential Layout Private Limited (hereinafter referred as "Corporate Debtor/Respondent") for defaulting an amount of Rs.3,55,96,376/- due and payable by the Corporate Debtor



("CD") as on 15.07.2023 which entails of the principal sum of Rs.1,99,80,000/- and towards return on investment @XIRR 17.758 (Contractual Rate) is Rs.1,56,16,376/-. The Petitioner has filed Form-1 as per the Code, wherein the date of default in Part IV is considered to be 18.08.2021. The Petitioner has also filed NeSL Report Form D whereby the date of default is mentioned as 18.08.2021.

2. The Corporate Debtor i.e., M/s SL Residential Layout Private Limited is a Company incorporated under the Companies Act on 07.06.2017 which is in the business of Real Estate. The Petitioner states that it subscribed for the Secured Redeemable Non-Convertible Debentures (Series B) of Rs.1000/- each issued by the CD by paying the subscription amount on 31.07.2018. The CD issued Debenture Certificate on 18.08.2018 and appointed Milestone Trusteeship Services Private Limited (now merged with Catalyst Trusteeship Ltd) as the Debenture Trustee. As per the issue terms, the interest is payable quarterly and Internal Rate of Return was 17.758% and the Debentures were due for redemption within three years from the deemed date of allotment on i.e.18.08.2021.
3. The CD failed to redeem the debentures as on the due date and defaulted in payment against the notice issued by debenture trustee. The CD filed a commercial suit against the Debenture Trustee and others before Commercial Court, Bangalore and before the matter came up for trial or framing of issues the CD proposed a settlement. The Debenture Trustee agreed with proposal and compromise petition was allowed and decreed by the court vide order dt.01.04.2022.
4. In accordance with the compromise decree, the CD was liable to redeem the Debentures along with interest on or before 31.08.2022, however the CD failed again to redeem the debentures on the due date.
5. The CD has hugely benefitted from the borrowings of the FC and did not keep up their commitment of repayment. The total outstanding including principal and interest as on 15.07.2023 is Rs. 3,55,96,376/-. It is averred that the CD has admitted their debt and the debenture trustee has commenced the recovery proceedings under SARFAESI Act and the proceedings are at the advance stage of sale of secured assets. Thus, the Financial Creditor has come before this



tribunal to seek initiation of CIRP. The Financial Creditor has also provided a table showing when the debt became due in Form-1 Part IV which is produced below

<u>Particulars</u>	<u>Date</u>	<u>No. of Days as at</u> <u>15.07.2023</u>
Failure to redeem debentures	18.08.2021	696
Acknowledges the debt in Audited FS for FY 2020-21	30.11.2021	592
Acknowledgement in the Decree of Settlement of Debt	01.04.2022	470
Acknowledgement in the letter proposing OTS	30.06.2023	15

6. The Respondent Corporate Debtor has filed the reply to the petition vide diary no.6292 on 14.12.2023 whereby the CD alleges that the Petitioner has not come before this Tribunal with clean hands and have deliberately concealed material facts and documents which are necessary and important for just and proper adjudication of the present application.
7. The CD submits that it is a going concern and has on various occasions outlined the future strategy to the financial creditor and debenture trustee. The financial health of the respondent is demonstrated through its willingness to settle the claims which are enumerated below:

Creditor	Settlement Amount	Remarks
Milestone Trusteeship Service Private Limited Acting as Trustee for NCDs raised.	Rs.9 crores Consent Decree passed by Bombay High Court	Rs.3 crores is paid already and with further capital inflows from a new investors balance amount will be cleared.
Bennett Property Holding Company Limited	Rs.15 crores Settlement Agreement executed	Rs.2.10 crores paid already and the balance is due
Nisus Finance	3.50 crores	Full amount paid and liability is discharged



- The CD submits that the purpose to issue debentures on private placement basis was for the acquisition of the Hoskote Project Land and creation of debt service reserve account. The amount of Rs.32 crores issued through this process has been utilized for the above stated purpose only and the same has been demonstrated to the debenture holders and the debenture trustee through various communications and also through the financial statements of the Respondent.
- 9.** Further, the CD had suffered due to the arbitrary cancellation of the Initial Release Order issued by the Satellite Town Ring Road Planning Authority. The delays faced by the respondent were not on its part but due to external factors beyond the control of the respondent. Because of this reason the respondent got delayed in making the necessary payments and it was duly communicated to the debenture holders and the debenture trustee. The Respondent went above and beyond to make the debenture holders and the debenture trustees feel at ease by agreeing to a settlement between the respondent and the debenture trustee by way of which the respondent was to pay the principal amount to the debenture trustee until 31.08.2022 which could further extend by 30 days as has been recorded under the decree of the Ld. Court of City Civil Judge (Commercial Courts Division) at Bangalore dt.04.04.2022.
 - 10.** The fact that the financial creditor contends that the default by the Corporate Debtor occurred on 18.08.2021 is not correct as due to the settlement the date of default if at all would be 31.08.2022 as per the terms of the settlement and not as per the date mentioned in the debenture trustee agreement. The Respondent also contends that since the default committed by the respondent in the settlement agreement has to be pressed through an execution petition before the Civil Court of Bangalore the application under Section 7 of the Code is not maintainable.
 - 11.** The CD avers that the financial creditor cannot claim to be such as the debenture trustee acting for the debenture holders had already compromised the matter with the Respondent and agreed on a settlement to be paid out by the Respondent. As a consequence to the same the applicant was to receive an amount from the settlement so agreed upon between the respondent and the



debenture trustee and thus the applicant would cease to be financial creditor and cannot derive any benefit from filing the instant application.

- 12.** It is further contended that the applicant have filed this application in the capacity of the debenture holders whereas the settlement was effected between the respondent and the debenture trustee on 04.04.2022. The debenture trustee has been appointed for the benefit of the debenture holders and it acts on behalf of the debenture holders and as such if the debenture trustee agrees to compromise the matter with the CD. Thus the debenture holder i.e. the applicant cannot approach this Tribunal for relief under Section 7 of the Code.
- 13.** The Petitioner has filed rejoinder vide diary dt.88 on 04.01.2024 wherein it is contended that the no substance of proof is produced by the CD before this Tribunal that the CD is a going concern without which this assertion is baseless and false. In fact, there exist a decree against the default of the CD for failure to redeem the debentures and subsequent failure to honour the decree passed by the learned Commercial Court. It is submitted that the last financial statement which has been filed by the CD on the portal of Ministry of Corporate Affairs is for FY 2020-21.
- 14.** It is submitted that the averment with respect to the financial capacity of the CD pertains to the ultimate holding Company of the CD as admitted by the CD itself and cannot be used as instances to show the financial capability of the CD. The CD is a separate legal entity and has miserably failed to redeem the Debentures as per the Issuance terms or even as per the Compromise Decree. The status of the holding Company as the master data of the ministry of corporate affairs is showing that said company is "Under Liquidation."
- 15.** It is further averred that the purpose for which the debentures were issued, alleged utilization of the proceeds thereof, reasons which caused the default etc. are not relevant in the matter of Application under Section 7 of the Code. It is further contended that the CD has admitted that there were delays in making necessary payments and undoubtedly said delays means default.
- 16.** It is submitted that the decree passed by the Hon'ble Commercial Court at Bangalore in Civil Suit No.468 of 2021 undoubtedly confirms that the CD has failed to pay the amount payable towards redemption of debentures and hence the settlement was arrived at. The said consent decree is a contract with



imprimatur of the Hon'ble Court and the CD has disobeyed the said approval and authorisation of the course of action consented too by not making the payment of amount as agreed to.

17. It is further submitted that original date of default cannot be shifted to another date vide the Compromise Decree. Additionally, the fact that the debentures were fully redeemable at the end of 36 months has been stated vide the Resolution passed by the shareholders of the CD in the meeting held on 25.07.2018 (Annexure 12 Page No.335 out of Page No.s334 to 339 of the Application). Hence, the Debentures were to be redeemed on 18.08.2021 is the fact on record.

18. The Petitioner deny that the present application is towards enforcement of settlement arrived at vide decree dt.01.04.2022 as the applicant is not a party to the said suit at all. It is further submitted that present Application gets its genesis from the very default caused by the CD to fully redeem the debentures at the end of 36 months as on 18.08.2021. It is also submitted that the CD has misunderstood the very purpose and rationale of the Code while making its submission vide para 9. The Applicant has not filed this Application to execute the compromise decree but the only to revive the CD by initiating CIRP so that there can be maximisation of value and the creditors and stakeholders can be benefitted.

19. Additionally, it is the CD who has requested the debenture trustee to act as a trustee for the benefit of debenture holders which will not affect the rights of the debenture holders to initiate this Application under the Code. The Petitioner relied on the decision of Hon'ble NCLAT Delhi Bench dt.27.02.2023 in *Rahul Arunprasad Patel v. Invesco Asset Management (India) Pvt. Ltd.* (CA(AT) (INS) No.346 of 2021) wherein the right of debenture holders to maintain an application under section 7 of the code was upheld independent of the debenture trustee. The same has been held in a series of judgements which has been cited by the Petitioners @Page 5-6 of the Rejoinder which is enlisted as under:

- *Rahul Arunprasad Patel v. Invesco Asset Management (India) Pvt. Ltd., Company Appeal (AT) (Insolvency) No.346 of 2021*



- *T. Prabhakar v. S. Krishnan and Ors., Company Appeal (AT) (CH) (Ins) No. 217 OF 2021*
- *Reliance AIF Management Company Limited v. Bharucha & Motivala Infrastructure Private Limited, C.P.(IB) 4108/MB/2019*
- *Zubin Bharucha v. Reliance AIF Management Company Ltd., Company Appeal (AT) (Ins) No.504 of 2021*
- *Clearwater Capital Partners Singapore Fund IV Private Limited v. Rajesh Estates and Nirman Private Limited, C.P. (IB) 560 of 2022.*

20. Heard the Ld. Counsels for the Petitioner and the Respondent and perused the pleadings on record.

21. In the facts and circumstances of the instant petition, it is clear that the Financial Creditors are the debenture holders who have come before this Tribunal on account of non-payment of their outstanding amount due to the failure to redeem the issued debentures as on the due date. The deemed date of allotment was 18.08.2021 which has been further extended to 31.08.2022 according to the Compromise Decree entered between the Corporate Debtor and the Debenture Trustee. This Tribunal also notes the failure of the Corporate Debtor to comply with the timeline of the Compromise Decree with regards to releasing payment. Thereafter, the Corporate Debtor has also proposed the OTS proposal dt.30.06.2023 (Page@ 365 Annexure-16) whereby the CD has stated as follows:

“...Without prejudice to the above, the Borrower brings to your notice that the said default in payment of the outstanding amount has not been deliberate and is owing to various genuine reasons, which were and continue to be, beyond the control of the Borrower, which includes unforeseen delay faced by the Borrower in securing the ‘Release Order’ for sale of the residential sites compromised in the Project known as ‘Shriram Bageshri’.

...The Borrower calls upon you to consider the above One Time Settlement Offer wherein the Borrower upon your confirmation undertakes to pay a sum of Rs.6,00,00,000.00/- within seven (7) days of such confirmation to demonstrate its bonafides to adhere to its credit obligations and revive the above Project with a fond hope to protect the interests of the all concerned parties.” However, the



Corporate Debtor again defied the timeline of the OTS Proposal as well and failed to repay the redemption amount. The filing of the OTS proposals by the CD itself is sufficient to conclude that the Debt and the default in payment is acknowledged.

22. It is clear that the Adjudicating Authority is to only determine whether a 'default' has occurred and whether the 'debt', which may still be disputed, was due and remain unpaid and once the Adjudicating Authority is satisfied that a default has occurred the Application must be admitted unless it is incomplete. In the present case, the CD has entered issued the Debenture Certificate dt.18.08.2018 to the Debenture Holders and simultaneously entered into a Debenture Trust Agreement dt.13.08.2018. The Corporate Debtor has also admitted to the liability on various occasions and the Compromise Decree and OTS proposal duly evidences the same. It is also noted that the date of default as per NeSL Report Form D, is also 18.08.2021 which is same as Form-1 Part IV of the Petition. . Further, the debt acknowledged by the CD is within the threshold limit of Rs.1 crores and the Financial Creditor has also proposed the name of the Insolvency Professional along with his consent as per Form-2. In so far as the limitation period is concerned, the date of filing of the petition is 4.08.2023 which is within limitation. Therefore, the pre-requisites of the Section 7 of the Code stands satisfied.

23. In view of the foregoing reasons, we are of the considered view that the instant Petition is liable to be admitted. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs. Rs.3,55,96,376/- (Rupees Three Crores, Fifty Five Lakhs, Ninety Six Thousand, Three Seventy Six Rupees), the **Petition** is **admitted** in respect of the Corporate Debtor i.e. **M/s. Aditya Chokshi Family Trust Fund** under Section 7 of the I&B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence 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 off 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 (54 of 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.*

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 the moratorium period.

The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor.

The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be

24. The Financial Creditor in Part-III of Form-1 has proposed Mr. Madhugiri Venkatarayappa Sudarshan, a qualified insolvency professional as Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent of the said IRP in Form-2 dated 13.07.2023 along with Affidavit dated 13.07.2023 is placed on record, wherein, the IRP *inter alia* affirmed that he is eligible to be appointed as IRP in the case of Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.



5. In view of the above, the Bench hereby appoints **Mr. Venkataraman Jayagopal**, bearing Regn. No. IBBI/IPA-002/IP-N00574/2017-2018/11741 residing at E-003, Victoria Haven, Patel Ram Reddy Road, Domlur Bangalore -560071 KA, IN having Mobile: 9341240595, Email: gopal_venus@hotmail.com **as an IRP of the Corporate Debtor**. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016. The IRP is also directed to file a copy of valid AFA within seven days from the date of receipt of copy of this Order.
26. The Financial Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
27. The Interim Resolution Professional shall after collation of all the claims received against the 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 Adjudicating Authority 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 for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
28. A copy of the order shall be communicated to both the Parties. Ld. 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.

S/d

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

S/d

K.BISWAL
MEMBER (JUDICIAL)