# IN THE NATIONAL COMPANY LAW TRIBUNAL NEW DELHI, BENCH-VI IB- 583/(ND)/2023

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 Adamya Export and Import Pvt. Ltd.

CIN U05131DL1998PTC097470) H-1580 Ground Floor, C.R. Park New Delhi South Delhi 110019

...Petitioner/Financial Creditor

#### **VERSUS**

# M/s Aadhar Infra Holding Ltd.

U70109DL2006PLC149973 133, Vishal Tower, Distt.-Centre Janakpuri, New Delhi-110058

...Respondent/ Corporate Debtor

### **CORAM:**

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)
SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

**Counsel for Petitioner:** Ms. Manvi Jain, Adv.

**Counsel for Respondent:** Mr. Uday Pratap Singh, Ms.

Vaishnavi Prakash, Advs.

#### **ORDER**

## PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date: 14.06.2024

- 1. This petition has been filed by M/s Adamya Export and Import Private Limited, through Authorised Signatory of Financial Creditor, Mr. Anil Kumar, Director, to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Aadhar Infra Holding Ltd under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "the Code") for the alleged default on the part of the Respondent in repayment of debt of Rs. 1,90,90,811/- (Rupees One Crore Ninety Lacks Ninety Thousand Eight Hundred and Eleven) as on 11.05.2023 and the date of default as per part IV of the Petition is 21.05.2023.
- 2. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:
  - That, the Corporate Debtor approached the Financial Creditor for availing loan facilities. Pursuantly, the Financial Creditor, through its Director Mr. Anil Kumar, extended 4 (four) unsecured loans of Rs. 19,50,000/- (Rupees Nineteen Lacs Fifty Thousand), total amounting to Rs. 78,00,000/- (Rupees Seventy Eight Lacs) (hereinafter referred to as "Principal Amount") vide 4 (four) separate Memorandum of Understanding

- (hereinafter collectively referred to as "MoUs") dated 20.02.2014 which were duly signed and executed between the Financial Creditor and the Corporate Debtor on mutually agreed terms and conditions.
- ii. That the entire Principal Amount was disbursed by Financial Creditor to the Corporate Debtor on 20.02.2014 by way of cheques.
- iii. That as per the terms set out in MoUs dated 20.02.2014, the outstanding loan amount was payable in a single shot payment. However, in the light the unprecedented circumstances arising from the Covid-19 pandemic, upon the request by the Corporate Debtor and to maintain a cordial relationship with Corporate Debtor, the Financial Creditor on request of the Corporate Debtor agreed to waive-off the interest payable on the outstanding loan amount for a period of two years, i.e. from Feb, 2020-2022
- iv. That, taking into account the impact of the Covid-19 pandemic, Financial Creditor has already exempted period of two years i.e., February 2020-22 for the purpose of repayment of loan and has waived-off applicable interest for the said period. Despite this leniency shown by Financial Creditor, the Corporate

Debtor has failed to fulfil its obligation of repaying the Outstanding Amount under the MoUs dated 20.02.2014 which is in total disregard of the terms and conditions mutually agreed upon by the Corporate Debtor and Financial Creditor.

- v. That aggrieved by the Corporate Debtor's actions, the Financial Creditor sent a notice dated 11.05.2023 to the Corporate Debtor requesting repayment of Outstanding Amount of Rs. 1,90,90,811/- along with applicable interest as on 11.05.2023. However, the Corporate Debtor has failed to either reply to the Financial Creditor's notice or make payment of the outstanding amount owed to the Financial Creditor.
- 3. The Corporate Debtor filed its reply in which the following contentions were made:
  - i. That, the Respondent is developing a project namely "The Business Capital" (hereinafter referred to as "Project"). The chosen plot, leased by the Greater Noida Industrial Development Authority (hereinafter referred to as "Authority") at Plot No.3 Knowledge Park V, Greater Noida, U.P.
  - ii. The Respondent sought financial assistance from the Financial Creditor to address its financial needs.

Subsequently, the Financial Creditor extended a total of four unsecured loans amounting to Rs. 78,00,000/-(Rupees Seventy-Eight Lacs) to the Respondent. These financial transactions were formalized through execution of four Memorandums of Understandings, (hereinafter referred to as "MoUs"), on 20.02.2014 with both parties willingly agreeing to specified terms and conditions. According to the terms, the Respondent was obligated to repay the loan amount at the end of 6 (six) years from the effective date, (hereinafter referred to as "Lock-In Period"), with a single-shot payment and an interest rate of 12% per annum. If the Respondent desired settle the outstanding amount after time to completing the Lock-In Period, an additional 3 (Three) years could be taken, subject to payment of an additional 24% interest per annum. After finalizing the MoUs, the Financial Creditor disbursed the entire principal amount of Rs. 78,00,000/- to the Respondent on the same day through cheques

iii. That the development of the project was progressing steadily and, in a time-bound manner and the Respondent was taking all efforts to ensure that the project is delivered in time. However, due to unforeseen Force Majeure

conditions, the projects undertaken by the Respondent encountered substantial challenges. Furthermore, for an extended period, the Respondent became embroiled in litigation arising from the cancellation of plots by the Authority. These plots, initially leased to the Respondent by the Authority, significantly complicated the Respondent's operational landscape. The dispute over the cancellation of plots by the Authority could not have been anticipated by Respondent and led to an inordinate delay. This delay is not attributable to the Respondent and can be squarely on account of the Greater Noida Industrial Development.

iv. In 2020, the COVID-19 pandemic exacerbated the situation, impact of the pandemic has created significant challenges for the business including reduced demand and revenues, disruption in supply chain escalated operational costs and cash flow constraints. Despite implementing diligent efforts to mitigate the adverse impacts, the constant uncertainty and restrictions have severally impacted the financial stability of the Respondent. Consequently, the Respondent is unable to meet its financial obligations, leading to a default on the payment owed to the Financial Creditor.

- v. That, it is an admitted fact that the Respondent is unable to make payments at the present time due to the constraints in the financial position which have been exacerbated by the aforementioned conditions. The Respondent is attempted to generate revenue and raise funds.
- vi. That the Respondent has available funds and is trying to raise more funds to ensure that all the creditors are repaid in the due course of events. The Petitioner herein is an unsecured creditor and may be repaid as well in the course of time as and when funds are available with the Respondent.
- vii. That the present petition is filed for recovery and not for resolution of the CD which is not permissible as per the scheme of the Code.
- viii.That the Respondent seeking time to clear all the standing amount excluding any interest. It is submitted that the Respondent seeks minimum 5 (five) years of time to repay the dues of the Financial Creditor through various instalments. However, the Financial Creditor has refused to meet with representatives of the Respondent.

- 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. As per the Memorandum of Understanding dated 20.02.2014, entered between the parties, a total loan amount of Rs. 78,00,000/- (Rupees Seventy-Eight Lacs) was disbursed to the Corporate Debtor through 4 separate cheques. The MoU prescribed a Lock-in Period of 6 years wherein compound interest at the rate 12% per annum was chargeable on the Loan Amount from the date of execution of the MoU. The Financial Creditor relinquished the right to interest for the period between 2020-2022 given the financial strain of Covid-19. However, the Corporate Debtor failed to repay the debt. The total outstanding debt against the Corporate Debtor as claimed by the Financial Creditor is Rs. 1,90,90,811/-
- 6. 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.

- 7. The Corporate Debtor in its reply has admitted that there is a debt and the CD has committed default in repayment of the outstanding due to the Financial Creditor. The admission made by the Corporate Debtor is reproduced as under: -
  - 10. That, regrettably, it is an admitted fact that the Respondent is unable to make payments at the present time due to the constraints in the financial position which have been exacerbated by the aforementioned conditions. The Respondent's attempted to generate revenue and raise funds.
- 8. 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: -
  - 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'.

- 9. 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. 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."

- 10. 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.
  - 11. 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.
  - 12. 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. Harish Taneja for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00088/2017-18/10229. The proposed IP have a valid AFA. Therefore, this Adjudicating Authority, appoints, Mr. Harish Taneja having registration number IBBI/IPA-002/IP-N00088/2017-18/10229 (Email harishtaneja78@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.

- 13. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Harish Taneja 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.
- 14. 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.
- 15. 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."
- 16. 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.

17. 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.

18. 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)