

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -3119/I&BP/MB/2018
Under Section 7 of the I&B Code, 2016

In the matter of

India Asset Growth Fund through Essel
Finance Advisors and Managers LLP &
Anr.,
601, 6th Floor, Jet Prime, Plot No. 39-B,
Suren Road, Andheri (East), Mumbai-
400093.

.... Petitioner 1

Vistra ITCL (India) Limited
IL & FS Financial Centre, Plot No. C-22,
G Block Bandra Kurla Complex, Bandra
East, Mumbai - 400051

.... Petitioner 2

Vs.

Rashmi Housing Private Limited
601-603, Classic Pentagon, Western
Express, Highway Chikwadi, Andheri
East, Mumbai-400099.

.... Respondent

Order delivered on: 14.12.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Tushar K Shah, Naina Agarwal, Sandhya Iyer i/b Vaish
Associates

For the Respondent: Vikas Shinde, Indrajeet Hingane.

Per: V. Nallasenapathy, Member (T)

ORDER

1. This Petition is jointly filed by India Asset Growth Fund through Essel Finance Advisors and Managers LLP & Anr. and Vista ITCL (India) Limited. (hereinafter called 'Petitioners') has sought the Corporate Insolvency Resolution Process of Rashmi Housing Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 15.11.2017 to the extent of Rs. 26,23,91,596/-, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



2. The first Petitioner is a trust established under the provisions of Indian Trust Act, 1882 and registered as a Category- II AIF under SEBI (Alternative Investment Fund) Regulations, 2012 and had invested in the Non Convertible debentures of the Corporate Debtor under the fund scheme "Annuities in Senior Secured Estate Transactions -1". The second Petitioner is the Debenture Trustee of the first Petitioner who holds the security interest created under the Debenture Trust Deed dated 20.10.2015 for the benefit of debenture holders.
3. The Petitioners enclosed Debenture Trust Deed dated 20.10.2015 executed by and among the Corporate Debtor, promoters of the Corporate Debtor, security providers (i.e Mr. Hemendra Bosmiya, proprietor of Rashmi Properties), Vistra ITCL (India) Limited (Formerly known as IL&FS Trust Company Limited), the second Petitioner herein, as a Debenture Trustee and Essel Finance Advisors & Managers LLP in their capacity as Investment Manager of Petitioner No. 1 and Petitioner No. 1. The said Deed reveals that the Corporate Debtor on the authority granted by the resolution of Board of Directors by a resolution dated 21.09.2015 intended to issue by way of private placement, senior, unlisted, redeemable, non convertible debentures of the face value of Rs. 1,00,000/- each aggregating up to Rs. 25 crores. It further states that, on the request of the Corporate Debtor, the promoters and the security provider and subsequent negotiation and discussion between the parties the investors relying upon the warranties, covenants, undertaking and indemnities provided by the Corporate Debtor and obligors, have decided to invest in the Corporate Debtor by subscribing to the Non Convertible Debentures (NCDs). The Petitioners enclosed the certificate of registration of charge by the Corporate Debtor under Section 77(1) and 78 of the Companies Act, 2013 read with sub-rule (1) of Rule 6 of the Companies (Registration of Charges) rules 2014 wherein the Corporate Debtor created charge in favour of the debenture trustee i.e the second applicant herein to secure the amount of Rs. 25 crores of debentures issued in favour of the first Petitioner in terms of Debenture Trust Deed dated 20.10.2015.
4. Further the Petitioner enclosed the following documents in support of the loan:
 1. Copy of Pledge Agreement dated 26.10.2015.
 2. Copy of Personal Guarantee executed by Ashok Bosamiya and Mahendra Bosamiya in favour of the Petitioner.
 3. Copy of Registration Certificate of SEBI.



4. Copy of Debenture Trust Agreement 23.10.2015.
 5. Copy of Escrow Agreement 23.10.2015.
 6. Statement of Accounts.
 7. Copy of Debt acknowledgement letter/investment confirmation.
5. Petitioner No. 1 invested in the NCDs of the Corporate Debtor to the extent of Rs. 25 crores on 21.10.2015. Section 5(8)(c) of the Code provides that "Financial Debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes- any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument. The Debentures were shown in the Balance sheet of the Corporate Debtor in the Financial Year 2015-16 and 2016-17, which is a clear acknowledgement of liability. Further, the Corporate Debtor on 26.04.2017 confirmed the investment by the Petitioner in the NCDs of the Corporate Debtor. Hence the Petitioner proved the existence of debt beyond any doubt.
6. On 04.01.2017, Essel Finance Advisors and Mangers LLP in their capacity as Investment Manager had given a notice to the Corporate Debtor, security provider, promoters of the Corporate Debtor and guarantors etc. reporting default in payment of principal which was due on 31.12.2016 referring to the Debenture Trust Deed dated 20.10.2015 and requested for the payment at the earliest in order to avoid any consequences under Debenture Document. On 07.07.2017 the said Investment Manager had given another notice reporting default in payment of the principal due of Rs. 3.125 crores due on 30.06.2017 and requested to make the payment at the earliest in order to avoid any consequence under the Debenture Document. On 08.06.2018 the Debenture Trustees issued a legal/ demand notice to the Corporate Debtor, guarantors etc. referring the Debenture Trust Deed dated 20.10.2015 calling upon them to pay immediately Rs.19,47,16,154/- toward total overdue amount including interest and default interest within 7 days receipt of notice failing which Insolvency and Bankruptcy Proceedings will be initiated. The Corporate Debtor by its reply dated 17.07.2017 addressed to the Investment Manager and the Debenture Trustee stated that due to force majeure event like demonetization they were unable to make the payment towards the principal and coupon and it was not a deliberate attempt to default the same. It was further stated that despite adverse market conditions they had paid Rs. 45 lakhs towards the dues and under the terms of the debenture document the Investment Manager/ the Debenture Trustees have the right to sell the flats of the Corporate Debtor



and secure the repayment of coupon and principal for which they are ready to co-operate.

7. On 04.08.2018, the Petitioner No. 2 issued reply to the letter of the Corporate Debtor dated 06.07.2018 and stated that the objections raised by the Corporate Debtor are frivolous and based on incorrect position of law and they are nothing but delaying tactics adopted by the Corporate Debtor and finally called upon the Corporate Debtor to pay Rs. 26,23,91,956/- towards the total overdue amount as on 31.07.2018. In the said notice a detailed calculation regarding the outstanding was attached specifying the date of default as on 15.11.2017.
8. Clause 22 of the Debenture Trust Deed provides as below;

"22 CONSEQUENCES OF AN EVENT OF DEFAULT

On and at any time upon occurrence of any of the Events of Default determined in the sole discretion of the Investment Manager, the Debenture Trustee shall if so directed by the Investment Manager, be entitled to exercise any of the following rights.

22.1 declare that all or part of the Debenture Outstanding, together with accrued Coupon and all other amounts accrued or outstanding under any other Transaction Documents be immediately due and payable, whereupon they shall become immediately due and payable;

22.2-----

-----22.18"

9. In view of the Clause 22 of Debenture Trust Deed cited supra, the Investment Manager at his sole discretion is entitled to declare that the whole of debenture outstanding become due and payable immediately and accordingly recalled the entire debentures' dues including interest and the same is in order. Accordingly the entire outstanding becomes due and since no payment was made, the Corporate Debtor committed default in repayment of the dues in respect of the debentures. Further during the hearing on 19.11.2018 the Managing Director of the Corporate Debtor was also present and submitted that he accepts the liability and default but requested time to settle the dues to the Petitioner by selling his private properties, but that has not materialized.



10. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (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.
- (II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 14.12.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.



- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Om Prakash Agrawal, 801, Sterling Towers, 3rd cross, Lokhandwala Complex, Andheri (West), Mumbai - 400053, Email:-opa.consulting@gmail.com, having Registration No. IBBI/IPA-001/IP-P00201/2017-18/10444 as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
11. Accordingly, this Petition is admitted.
12. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional within seven days from the date order is made available.

SD/-

V. NALLASENAPATHY
Member (T)

SD/-

BHASKARA PANTULA MOHAN
Member (J)



Certified True Copy
Copy Issued "free of cost"
On 29-03-2019

B. A. Patel

Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India