

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, NEW DELHI**

C.P. NO.IB-1038(PB)/2018

**IN THE MATTER OF:**

IL & FS Financial Services Limited

.....Petitioner

Vs.

Golden Glow Estates Pvt Ltd

....Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

**Order delivered on: 27.11.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**Ms. INA MALHOTRA**  
**Hon'ble Member (Judicial)**

**PRESENTS:**

For Petitioner	: Mr. Gyanendra Kumar, Mr. Robin Grover, Advs.
For Respondent	: Ms. Manisha Chaudhary, Mr. Mansumer Singh, Advs.

**ORDER**  
**M.M.KUMAR, PRESIDENT**

The Petitioner claiming to be a financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Golden Glow Estates Pvt Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is a company incorporated under the provisions of the Companies Act, 1956. It has its registered office at the IL&FS Financial Centre, 3<sup>rd</sup> Floor, Plot No. C-22, G-Block, Bandra Kurla Complex, Bandra East, Mumbai- 400051.

2. The Corporate Debtor – Golden Glow Estates Pvt Ltd was incorporated on 25.10.2005. The identification number of the Corporate Debtor given is CIN U70101DL2005PTC142098 and its registered office is situated at B-292, Chandra Kanta Complex, Shop No. 8, Near Metro Pillar No. 161, New Ashok Nagar, New Delhi - 110096. The authorised share capital of the company is Rs. 5,00,000/- (Rupees Five Lakhs only) and the Paid-up share capital is Rs. 1,00,000/- (Rupees One Lakh only) respectively.



3. It is submitted by the Petitioner that IL&FS Financial Services Limited had sanctioned a term loan facility of Rs. 240,00,00,000/- (Rupees Two Hundred Forty Crores Only) under the Loan Agreement (**Annexure D (Colly)**) which was executed between the Financial Creditor and Corporate Debtor on 30.12.2014 and amended by a Supplement Agreement dated 01.07.2015 for the said sum.
4. As per the averments of the 'Financial Creditor', the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) since 04.07.2017 in the books of IL&FS Financial Services Limited.
5. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor as on July 30, 2018 is Rs. 239,92,12,329/- (Rs. 174,26,24,356/- is due towards the principal amount and Rs. 65,65,87,973/- is due towards the interest).



6. As per the averments made by the Petitioner- financial creditor, the default of the Corporate Debtor is evident from the below mentioned documents:

- i. Letters dated 06.07.2017 and 24.07.2017 **(Annexure P(Colly))** issued by IL&FS to the Corporate Debtor in relation to the notice of defaults by the Corporate Debtor for the facility provided;
- ii. Demand Notice dated 04.12.2017 **(Annexure AA)** and 13.07.2018 **(Annexure W)** issued by IL&FS to the Corporate Debtor in relation to the facility;
- iii. Balance Sheet for the financial year 2016-2017 **(Annexure BB)** of the Corporate Debtor where the outstanding debt has been acknowledged; and
- iv. A Commercial Credit Information Report issued by Experian Credit Information Company of India Private Limited dated 25.07.2018 **(Annexure Y)**.

7. The Financial Creditor has proposed the name of Mr. Udayraj Patwardhan as the Insolvency Professional with the address





2 Patwardhan Apartments, Patil Colony #3, College Road, Nashik-422005 and E-mail-id- udayraj\_patwardhan@sumedhamanagement.com. His registration number is IBBI/IPA-001/IP-N00024/2016-17/10057. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration **(Annexure C)**. He has declared that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosure has been made as per the requirement of the IBBI Regulations.

8. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt.

PARTICULARS OF FINANCIAL DEBT		
1.	Total amount of debt granted Date(s) of disbursement	IL&FS Financial Services Limited had sanctioned Rupee Term Loan Facility aggregating to INR 240 Crores (Rupees Two Hundred Forty Crores Only).  <i>Nature and type of facility:</i>

		<p>Term Loan of Rs. 240,00,00,000/- repayable in 10 equal quarterly instalments after a moratorium period of 10 months from the date of first disbursement.</p> <p><i>Tenor of Term Loan and repayment schedule:</i></p> <p>48 months from the date of first disbursement, i.e. January 05, 2015.</p> <p>The term loan was to be repaid in 10 equal quarterly instalments after a moratorium period of 18 months from the date of first disbursement.</p> <p>The details of the dates of disbursement and the amounts disbursed under the Loan Agreement are annexed <b>(Annexure F)</b>.</p>	
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2.	Amount claimed to be in default and the date on which the default occurred	<p>The total amount in default due to IL&amp;FS by the Corporate Debtor as of 30.07.2018 is Rs. 239,92,12,329/-.</p> <p>The calculation of the total dues is mentioned as under:</p> <table><tr><th>Particulars</th><th>Amount (Rs.)</th></tr><tr><td>Principal amount</td><td>174,26,24,356</td></tr><tr><td>Interest payable on Principal</td><td>41,67,97,551</td></tr><tr><td>Penal Interest</td><td>1,87,06,976</td></tr><tr><td>Interest on delayed interest</td><td>9,59,17,774</td></tr><tr><td>Additional Interest</td><td>12,51,65,672</td></tr><tr><td><b>Total</b></td><td><b>239,92,12,329</b></td></tr></table> <p>The initial date of default for the Principal Amount is 05.10.2016 and for interest is 01.01.2016. Although interim payments have been received thereafter, the corporate debtor continues to be in default and as on date the account of the</p>	Particulars	Amount (Rs.)	Principal amount	174,26,24,356	Interest payable on Principal	41,67,97,551	Penal Interest	1,87,06,976	Interest on delayed interest	9,59,17,774	Additional Interest	12,51,65,672	<b>Total</b>	<b>239,92,12,329</b>
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		<p>Corporate Debtor has been classified as Non-Performing Asset (NPA) since 04.07.2017.</p> <p>The statement showing the various computation in relation to the financial debt is annexed (<b>Annexure - G, H, I, J, K</b>).</p>
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9. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents, records and evidence of default. The various documents mentioned are stated below:

- I. Deed of Hypothecation of Receivables dated 30.12.2014 (Annexure L (Colly));
- II. Pledge (Annexure M (Colly)), (Annexure N (Colly)), (Annexure O (Colly)), (Annexure P (Colly)), (Annexure Q), (Annexure R (Colly)), (Annexure S (Colly));
- III. Demand Promissory Note dated 29.12.2014 (Annexure T);





IV. Mortgage of Immovable Property (Annexure U (Colly));

V. Guarantee (Annexure V (Colly)) and (Annexure W).

10. A reply to the petition is filed by one Mr. Arun Singh, being the Authorized signatory of the Respondent- Corporate Debtor, who has been given authority vide Board Resolution dated 11.08.2018.

11. Rejoinder to the Reply has also been filed by the Petitioner- Financial Creditor on 17.09.2018.

12. In the Reply filed on 12.09.2018 the Respondent-Corporate Debtor has raised certain objections. One of the preliminary objection raised is that the Petitioner has filed the present petition without complying with the relevant provisions of the Notification dated 12.02.2018 issued by the RBI bearing No. DBR.No.BP.BC.101/21.04.048/2017-18 titled "Resolution of Stressed Assets-Revised Framework" (RBI Circular).



The Financial Creditor-Petitioner has successfully controverted the aforesaid objection raised by the Respondent Corporate Debtor and has stated that the said RBI Circular is only applicable to the accounts of the borrower(s) which are maintained with Commercial Banks (excluding Regional Rural Banks) or All India Financial Institution. The Petitioner is a Non-Banking Financial Company (NBFC) which does not fall in any of the above mentioned category and hence, the RBI Circular is not applicable to the Petitioner.

13. Another objection is that the present Petition has been filed under improper authorization and the amount claimed is exaggerated.

However the assertions have been controverted. The Financial Creditor-Petitioner has attached a copy of the Board Resolution (**Annexure A**) authorizing Ms. Vidhu Kapila to file the present petition. It is also averred by the Petitioner that the amount claimed is based on the terms of the Loan Agreement and it is calculated in a transparent manner.



14. The Respondent-Corporate Debtor admits the disbursement of loan and further states that the contents of Part-IV of the Petition are not denied to the extent that the same are a matter of record. It has been candidly admitted by Ms Manisha Chaudhary and there was no resistance to the admission of the petition.

15. In view of the aforesaid statement made by the learned counsel for the Respondent-Corporate Debtor, we find that advancement of loan and default stand admitted. Even Otherwise there is overwhelming documentary evidence on record as is evident from a perusal of para 3,6 and 9 of this order which support those findings.

16. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled. In that regard, he has submitted that the application is complete in all respects as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1)



of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

17. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we may first examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

**“Initiation of corporate insolvency resolution process by financial creditor.**

7 (1) .....

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.





7 (3) .....

7 (4) .....

7 (5) Where the Adjudicating Authority is satisfied that—

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
- (b) ....."

18. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the Performa prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. We are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary



proceedings pending against the proposed Interim Resolution Professional.

19. As a sequel to the above discussion, this petition is admitted and Mr. Udayraj Patwardhan with the address 2 Patwardhan Apartments, Patil Colony #3, College Road, Nashik-422005, E-mail-id - udayraj\_patwardhan@sumedhamanagement.com and registration number IBBI/IPA-001/IP-N00024/2016-17/10057 is appointed as the Interim Resolution Professional.

20. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. The word 'immediately' has been defined to mean three days by Regulation 6(11) of the IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from



the provisions of Section 14 (1) (a), (b), (c) & (d) and thus 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 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;

(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.”



22. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 affairs of the Corporate Debtor. In case there is any violation by the ex-management or its ex-directors the Interim Resolution Professional would be at liberty to make appropriate application to this 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.

24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be



also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-  
(M.M.KUMAR)  
PRESIDENT  
27.11.2018

Sd/-  
(INA MALTHOTRA)  
MEMBER (JUDICIAL)

27.11.2018  
(VIDYA)