

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

15. C.P.(IB)-198(MB)/2022

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **28.03.2023**

NAME OF THE PARTIES: Vistra Itcl (India) Limited

V/s.

Aaditri Constructions Private Limited

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Aditya Shiralkar a/w. Adv. Nanki Grewal and Adv. Raveena Modi i/b.
Wadia Ghandy & Co, counsel appearing for the Petitioner, Mr. Mohd Tahir,
counsel appearing for the Corporate Debtor are present through virtual
hearing.

C.P.(IB)-198(MB)/2022

Heard the argument on both side and the above company petition is
admitted. Detail order would follow:

Sd/-
MADHU SINHA
Member (Technical)
//SKS//

Sd/-
H.V.SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 198/IBC/MB/2022

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Vistra ITCL (India) Limited

(U66020MH1995PLC095507)

Registered office at: The IL & FS
Financial, Plot No. C-22, 3rd Floor, G
Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400051

.....Financial Creditor

Vs

**Aaditri Construction Private
Limited.**

(CIN: U45400MH2015PTC261625)

Registered office at: ONE BKC A-
Wing, 1401, Plot No. C-66, Bandra
Kurla Complex, Bandra (East),
Mumbai 400051

.....Corporate Debtor

Order dated : 28.03.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Aditya Shiralkar a/w. Adv. Nanki Grewal
and Adv. Raveena Modi i/b. Wadia Ghandy &
Co, Adv.

For the Respondent: Adv. Mohd Tahir,

ORDER

1. This Company petition is filed by *Vistra ITCL (India) Limited* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Aaditri Construction Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. **864,38,82,771/-** (Rupees Eight Hundred and Sixty Four Crore Thirty Eight Lakh Eighty Two Thousand Seven Hundred and Seventy one only).
3. **The brief facts of the Financial Creditor are as follows:-**
 - i. Vistra ITCL (India) Limited (“**Financial Creditor**”) executed a Debenture Trust Deed with, inter alia, Aaditri Constructions Private Limited (“**Corporate Debtor**”) whereby 3,95,00,000 secured optionally convertible debentures having face value of Rs. 100/- (Rupees Hundred) each and aggregating to Rs. 395,00,00,000/- (Rupees Three Hundred and Ninety-Five Crore Only) (“**Subscription Amount**”) were agreed to be issued by the Corporate Debtor to the debenture Holders in the manner and on the terms and conditions mentioned therein.
 - ii. Out of the Subscription Amount, an amount of Rs. 340,00,00,000/- (Rupees Three Hundred and Forty

Crore) equivalent to 340,00,00,000 (Rupees Three Hundred and Forty Crore) equivalent to 3,40,00,000 (Three Crore Forty Lakh) number of debentures (“**Debentures**”) was disbursed by the Debenture Holders in multiple tranches.

- iii. Various securities as set out in Part V of this Application have been created in favour of the Financial Creditor to secure the Debentures.
- iv. The DTD and the transaction documents executed pursuant thereto set out various conditions to be complied with by, inter alia the Corporate Debtor. Various covenants and undertakings were also given by the Corporate Debtor under the DTD and the transaction documents. However, the Corporate Debtor failed to fulfil conditions and breached various undertaking and covenants.
- v. On account of the occurrence of the aforesaid events, various events of default under the DTD and the transaction documents have occurred and are continuing. The DTD stated that on an occurrence of an event of default, the Financial Creditor was entitled to call upon the Corporate Debtor to redeem the Debentures and repay the Secured obligations in full.
- vi. In light of the events of default, the Financial Creditor vide its notice (“**EOD Notice**”) called upon, inter alia, the Corporate Debtor to forthwith redeem the debentures by paying the secured Obligations in full. However, the Corporate Debtor has not only failed to redeem the debenture but has also failed to respond to the EOD Notice.
- vii. Thus, at the time of filing this application an amount of Rs. 864,38,82,771/- (Rupees Eight Hundred and Sixty-

Four Crore Thirty-Eight Lakh Eighty-Two Thousand Seven Hundred and Seventy-One) (calculated in the manner as set out in Exhibit D to this Application) is due and payable to the Financial Creditor.

4. The Corporate Debtor has filed affidavit in reply Mr. Anil Chhabria Authorized Signatory of Aaditri Constructions Pvt. Ltd in a routine manner opposing the admission of the above company petition. The relevant paras of the affidavit in reply are extracted here under.
 - i. The Corporate Debtor submits that, the Financial Creditor had not disbursed the debenture subscription amount as per the Debenture Trust Deed and had thereby committed breach and default of the loan documents. The breach and default committed by the Financial Creditor had resulted in the amount assured under the transaction documents and additional amount thereunder not being disbursed and the project was adversely affected and the project came to a grinding halt in first quarter of 2019. Despite repeated assurances given by the Financial Creditor to provide additional amounts to resume the project and enable the Corporate Debtor to make payment, the Financial Creditor had refused to comply with its obligations under the Loan Agreements. The contemporaneous conduct of the Financial Creditor and the Corporate Debtor would demonstrate that there was waiver of obligations under the transaction documents and the Financial Creditor and the Respondent had jointly

explored possibility of involving third party for completion of the project.

- ii. The Corporate Debtor submits that, the Financial Creditor, HDFC Capital, India Bulls Housing Finance, Yes Bank as the Lenders had agreed to appointment of another Development Manager to complete the project and the Development Manager to carry out, execute and complete development of Phase 1 of the Anantya Chembur Project and the Corporate Debtor had given its consent to the appointment of another Development Manager and had agreed to transfer of LOI in favour of another development Manager and provide support to the Lenders and to the new Development Manager towards approval, customer consents, DA/POA etc. from tenants, tenants management, SRA Liasoning, site access, manage old rent payments to slum dwellers and provide no dues certificate from slum society/slum dwellers, provide business plan for Phase 2 of the project and visibility for resolution of remaining debt of existing lenders before sanction of new debt and enter into consent terms with the lenders to the satisfaction of Lenders. The tenure of development was four years. The bank accounts were to be operated under the control and supervision of the Development Manager and the Lenders including the Financial Creditor and all sales monies, receipts, advances to be utilized inter alia towards completion of the project, payment of statutory dues and payment of debt of the lenders. In pursuance thereto, negotiations and discussions had taken place

between HDFC Capital, the principal, L & T Realty and the Corporate Debtor. Emails and draft of the Term Sheet were exchanged and Term Sheet dated 04.10.2019 was executed.

5. Heard Mr. Aditya Shiralkar, counsel appearing for the Financial Creditor and Mr. Mohd Tahir, counsel appearing for the Corporate Debtor and perused the material available on record.
6. The counsel appearing for the Financial Creditor invited the attention of this tribunal to the relevant documents i.e. copy of the documents under which disbursed amount have been disbursed, copy of the Debenture Trust Deed dated 03.08.2018, copy of computation of the total amount in default to the Financial Creditor by the Corporate Debtor which were annexed to the company petition in support of their claim. The counsel appearing of the Financial Creditor also invited the attention of this tribunal the default notice dated 28.01.2021 issued by the Financial Creditor and various agreement executed between the parties which were also annexed to the main company petition in support of their claim.
7. Mr. Mohd Tahir, counsel appearing for the Corporate Debtor fairly conceded that the only defence raised by them in the above company petition is that the Financial Creditor has not disbursed the entire debenture amount and therefore the above company petition is liable to be dismissed. The above contention of the Corporate Debtor is no longer res-integra. The **Hon'ble NCLAT in the judgment of State Bank of India Vs. N.S. Engineering Projects Pvt. Ltd. Company Appeal No. 978/2022 order dated 03.02.2023.** After analysing the entire case

law on the issue rejected the similar plea of the Corporate Debtor and directed the Adjudicating Authority to admit the Section 7 Company Petition by setting aside its earlier dismissal order with the following observation at para 21 of the order as follows:

*The Clause (u) of the Restructuring Agreement entered between the parties is in the identical words as Clause 20(t), which was noticed by the Hon'ble Supreme Court in Innoventive Industries Ltd. The Hon'ble Supreme Court in Innoventive Industries Ltd. having held that **“The Obligation of the corporate debtor was, therefore, unconditional and did not depend upon infusing of funds by the creditors into the appellant company”** is a declaration of law in reference to an Application under Section 7. The view taken by the Adjudicating Authority in the impugned order dated 28.06.2022 is clearly not in consonance with the law declared by the Hon'ble Supreme Court in Innoventive Industries Ltd. (supra). This alone is sufficient to set aside the impugned order passed by the Adjudicating Authority.*

Except the above plea the corporate debtor did not raised any substantial legal plea in opposing the above company petition.

8. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the “debt” and “default” are clearly established and the debt is also within limitation. The Financial Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present

Company Petition satisfies all the necessary requirement for admission.

9. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly, the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) - 198(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Aaditri Construction Private Limited.
- b. This Bench hereby appoints **Mr. Jayesh Natvarlal Sanghrajka** Address : Jayesh Sanghrajka & Co. LLP 405-407, Hind Rajasthan Building, DS Phalke Road, Dadar (E), Mumbai-400014 Email Id: (jayesh@jsandco.in) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00216/2017-2018/10416 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses only and not towards fee till his fees is decided by COC.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)