



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH**

Company Petition No. 358/(IB)-MB-V/2021

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

In the matter of

**M/s Nirnidhi Consultant Private
Limited**

P-27, Princep Street, 3rd Floor Kolkata -
700072

... Petitioner/Financial Creditor

V/s

**M/s Global Infratech & Finance
Limited**

Office No. 16, Ground Floor, Rukmani
Purushottam No. 21, J.P Road, Andheri
West, Mumbai- 400058

... Respondent/Corporate Debtor

Order delivered on: 25.11.2022



Coram:

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

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Mr. Vinod Chaurasia, Advocate

For the Respondent: Mr. Yahya Batatawala, Advocate

ORDER

1. The Petitioners viz. 'M/s Nirnidhi Consultant Private Limited' (**hereinafter as Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'M/s Global Infratech & Finance Limited' (**hereinafter as 'Corporate Debtor'**). This Petition is filed 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 for a Resolution of an unresolved Financial Debt of Rs. 1,22,18,042/- inclusive of interest till 30.11.2020.
2. The listed documents annexed by the Petitioner on which the Petitioner relied are as follows:
 - i. A copy of bill dated 01.10.2019.
 - ii. A copy of Loan Agreement dated 01.10.2019.
 - iii. A copy of Financial Creditor's letter dated 20.03.2020 converting sale of Rs. 35 Lakhs into Loan.
 - iv. A copy of the acknowledged ledger account of the Corporate Debtor for the period 01.04.2019 to 31.12.2019.
 - v. A copy of the acknowledged ledged account of the Corporate Debtor for the period 01.04.2020 to 31.12.2020.
 - vi. A copy of Demand letter dated 02.01.2020 sent by Financial Creditor



- vii. A copy of request letter dated 07.04.2020 send by Corporate Debtor.

BRIEF FACTS

3. A loan Memorandum of Understanding dated 01.10.2019 was executed between the Financial Creditor and Corporate Debtor wherein the Petitioner had advanced an Inter Corporate Loan of Rs.71,40,000/- at a rate of 12% per annum against lien of equity shares, to the Corporate Debtor. As per the terms sheet of the Memorandum of Understanding, the loan amount would be repaid on demand on or before 31.12.2019 and in case of default a penal interest at the Rate of 1% per month would be payable.
4. Petitioner further submits that on 01.10.2019, the Petitioner sold Equity shares of Rs. 34,00,000/- of M/s. Poddar Advantage Consultancy Pvt. Ltd. to the Respondent, which was to be repaid within 7 days, however the Respondent failed to make the payment. Pursuant to which the Financial Creditor had sent a letter dated 20.03.2020 to the Corporate Debtor demanding payment of outstanding amount and decided to convert sale amount of Rs. 34 Lakhs into Loan & propose to charge interest at the rate of 12% p.a, which was duly acknowledged and accepted by the Corporate Debtor.
5. Petitioner submits that a demand letter dated 02.01.2020 for repayment of loan of Rs.1,10,78,807/- was sent to the Respondent. On which the Corporate Debtor vide its letter dated 07.04.2020 requested for more time but not later than 10th Aug 2020, for repayment of outstanding dues.
6. Petitioner further submits that a final reminder for repayment of loan vide email dated 28.11.2020 was sent to the Corporate Debtor. In response, the Corporate Debtor had requested more time of 6 months vide email dated 30.11.2020 for repayment of outstanding the dues of Rs. 1,23,37,564/-. However, the Corporate Debtor failed had failed to



make the payment of balance outstanding amount despite of several remainders through telephone and hence made a default in repayment of loan.

7. Petitioner submits that the Corporate Debtor had acknowledged its liability of outstanding amount vide acknowledged Ledger Account for the period 01.04.2019 to 31.12.2019, 01.04.2020 to 16.01.2021 and 01.04.2020 to 31.12.2020 & Balance confirmation issued by Corporate Debtor as on 01.01.2020, 17.01.2021 and 01.12.2020. The same is attached to the company petition.
8. In response to this, the Corporate Debtor had filed its Affidavit in Reply (**'Reply'**) and has submitted that business was affected immensely, and the Corporate Debtor was unable to repay due to COVID-19 Pandemic. Moreover, the Corporate Debtor has admitted the claim of the Financial Creditor of Rs. 1,22,18,042/- which is due and payable. The Corporate Debtor has further submitted that after making several efforts, the Respondent has failed and defaulted to make the repayment.
9. In relation to the Corporate Debtor, it is seen from the reply filed by the Corporate Debtor that it has admitted the debt and has stated that it is not able to clear the dues outstanding. Hence the Petitioner has proved the **'existence of debt'** and **'default'** on the part of the Corporate Debtor.
10. Ongoing through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
11. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under



section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of '**debt**' and '**default**', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.

12. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**' by passing the following:

ORDER

- a. The above Company Petition No. 358/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Global Infratech & Finance Limited.**
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Deepak Saruparia**, having Email ID - dsaruparia@hotmail.com , having Address - P P Kapoor & Co., 210, Hub Town Viva, Off WEH, Shankerwadi, Jogeshwari(E), Mumbai City - 400060 and having registration No. IBBI/IPA-001/IP-P00660/2017-2018/11689, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs 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 and not towards fee till his fee 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, C.P. No. 358/IBC/MB/2021 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

H.V. Subba Rao
Member (Judicial)