

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IBA/149/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **M/s. Green Valley Shelters Pvt. Ltd.**

Nippon Life India AIF Management Limited

Formerly known as

M/s. Reliance AIF Management Company Limited

Peninsula Business Park, 4th Floor, Tower A

Ganpatrao Kadam Marg, Lower Parel (W),

Mumbai – 400 013

Nippon Life India Asset Management Limited

Formerly known as

M/s. Reliance Nippon Life Asset Management Limited

Peninsula Business Park, 4th Floor, Tower A

Ganpatrao Kadam Marg, Lower Parel (W),

Mumbai – 400 013

... Financial Creditors

-Vs-

M/s. Green Valley's Shelters Private Limited

Reg. Off:-

No.9, 1st Floor, Bishop Wallers Avenue (East)

Mylapore,

Chennai – 600 004

...Corporate Debtor

Order Pronounced on 12th August 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : J.R. Jayant, Advocate

For Corporate Debtor : A.S. Sathish Kumar, PCS

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by **M/s. Nippon Life India AIF Management Limited** (hereinafter referred to as '*Financial Creditor*') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Green Valley's Shelters Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. It is seen from the records that originally the present Application was filed in the name of M/s. Reliance AIF Management Company Limited as a Financial Creditor, who has subsequently undergone a change of name and accordingly moved an IA/72/CHE/2021 before this Tribunal seeking for amending the cause title in the present Application viz. IBA/149/2020. It is seen from the proceedings that this Tribunal vide its order dated 15.04.2021 has allowed the said Application and directed the Applicant to amend the cause title of both the Applicant.

Accordingly, the cause title was amended and the matter was taken up for hearing and final disposal on 29.07.2021.


3. Part-I of the Application sets out details about the Financial Creditor from which, it is evident that the Financial Creditor is a Company incorporated under the Companies Act, 1956. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U45201TN2004PTC052266 which was incorporated on 05.01.2004 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.9, 1st Floor, Bishop Wallers Avenue (East), Mylapore, Chennai – 600 004. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. S. Krishnan, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

4. From Part-IV of the Application, it is seen that a sum of Rs.36,59,28,316/- (Rupees Thirty Six Crore Fifty Nine Lakh Twenty Eight Thousand Three Hundred and Sixteen only) is being claimed by the Financial Creditor as the Financial debt. Part – V of the Application discloses about the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;



- a) First and exclusive charge on the underlying freehold lands and development rights on the "Project Properties" from the date of execution of Mortgage Cum Trust Deed dated 01.08.2016 and Unsold Units thereon (without possession of land/superstructure, undivided share in the land with possession of original title agreements).
- b) First and exclusive charge on the Project receivables from the "Project properties" effective from the date of execution of Transaction Documents in favour of the Applicants.
- c) Corporate Guarantee issued by the Corporate Debtor and Arkie Atelier Design India Private Limited.
- d) Personal Guarantee issued by the promoters of the Corporate Debtor.
- e) Demand promissory note issued for the face value of NCDs along with coupon.
- f) Purchase Option Agreement with respect to the mortgaged properties.
- g) Any other security interest created in favour of the Debenture Holders under the Transaction Documents.

5. The Learned Counsel for the Financial Creditor submitted that the Applicants in the capacity as a Trustee, pursuant to the execution of a Mortgage Cum Trust Deed invested a sum of Rs.31,75,00,000/- by subscribing to by way of private placement, senior, secured, unrated, unlisted, fully redeemable, non-convertible debentures (NCDs) in multiple tranches. It was also



submitted that the Financial Creditor have subscribed to a total of 3,175 NCDs having face value of Rs.1,00,000/- each.

6. It was submitted that the Financial Creditor No. 1 has invested in NCDs in five tranches totalling to an amount of Rs.28,75,00,000/- and the Financial Creditor No. 2 has invested in the NCDs under a single issue worth Rs.3,00,00,000/- totalling to an amount of Rs.31,75,00,000/-.

7. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor was engaged in the business of real estate and developments of properties and the Corporate Debtor had approached the Applicants for financial assistance to repay the existing indebtedness incurred by it and fund the construction and development of the projects – GVSPL Raksha and GVSPL Green Park, which were being developed by the Corporate Debtor. In pursuance of the same, it was submitted that the Corporate Debtor had mortgaged 31 residential flats in the project known as GVSPL Raksha along with receivables of 3 Units already sold and 12 residential flats in the property known as GVSPL Green Park in favour of the Applicant.

8. The Learned Counsel for the Financial Creditor submitted that, in order to secure the repayment of the aforesaid monies, the

Corporate Debtor created the following security in favour of the Applicant;

- a) First and exclusive charge on the underlying freehold lands and development rights on the "Project Properties" from the date of execution of Mortgage Cum Trust Deed dated 01.08.2016 and Unsold Units thereon (without possession of land/superstructure, undivided share in the land with possession of original title agreements).
- b) First and exclusive charge on the Project receivables from the "Project properties" effective from the date of execution of Transaction Documents in favour of the Applicants.
- c) Corporate Guarantee issued by the Corporate Debtor and Arkie Atelier Design India Private Limited.
- d) Personal Guarantee issued by the promoters of the Corporate Debtor.
- e) Demand promissory note issued for the face value of NCDs along with coupon.
- f) Purchase Option Agreement with respect to the mortgaged properties.
- g) Any other security interest created in favour of the Debenture Holders under the Transaction Documents.

9. It was submitted by the Learned Counsel for the Financial Creditors that the Corporate Debtor appointed IDBI Trusteeship Limited as the Debenture Trustee vide Debenture Trust Agreement dated 01.08.2016 in respect of the NCDs. Further, it was submitted



that as per the Transaction Documents, on the occurrence of the Event of Default as defined in the Transaction documents, the Corporate Debtor is liable to pay interest of 2% over and above the IRR of 20.75% or coupon of 19% p.a.

10. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has violated several terms and conditions of the Transaction Documents and has committed material breaches of its obligations, covenants, representations, warranties and undertakings under the Transaction Documents resulting in huge outstanding. Further, it was submitted that the Financial Creditor made several request and sent reminders to the Corporate Debtor for the repayment of the amount dues, however the Corporate Debtor has till date failed to make any payment towards the outstanding amount. It was submitted that the initial defaults in repayment of the outstanding amounts arose on 30.09.2018 and 31.12.2018 and hence the Applicant issued two separate notices dated 07.01.2019 informing the Corporate Debtor that the event of default has occurred and demands for the payment of the outstanding amount by 15.01.2019. However, it was submitted that the Corporate Debtor continued to be in default despite the issuance of the notice dated 07.01.2019 and that it was submitted that the Corporate Debtor is unable to pay its debts and it is just, fair and equitable that the Corporate Insolvency Resolution Process

be initiated against the Corporate Debtor in accordance with the provisions of the Code.

11. In relation to the Corporate Debtor, it is seen that only written submissions have been filed by the Respondent stating that the name of the Applicant has been wrongly mentioned in the Application. Further, it is stated in the written submissions that on 03.03.2020, the Debenture Trustee has invoked the personal guarantees of all the guarantors by serving the Demand Notice to all the guarantors and has also filed an Application to initiate the Insolvency Resolution Process against the Personal Guarantors and that the Debenture Trustee alone is entitled to file an Application under Section 7 of IBC, 2016 and hence sought for the dismissal of the present Application.

12. Heard the submissions made by the Learned Counsel for the parties and perused the records. Before we proceed to merits of the present case, it is necessary to refer to the definition of the term 'financial debt' as envisaged under sub-section 8 of Section 5 of IBC, 2016. which is as follows:-

(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;



(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;

13. The Corporate Debtor has not disputed the fact that the Financial Creditor has invested in the Corporate Debtor in the form of Non-convertible Debentures (NCDs) in multiple tranches to the tune of Rs.31,75,00,000/-. Further, the amount raised pursuant to

the debentures would qualify to be a 'financial debt' as per Section 5(8)(c) of IBC, 2016. It is seen from the records, that the Respondent / Corporate Debtor has preferred only to file the written submission and not reply to the Application filed by the Financial Creditors.

14. Further, from the written submission submitted by the Corporate Debtor it is seen that they not disputed the debt nor default. In the circumstances there is a clear evidence in the case of the existence of 'financial debt' and the 'default' of such financial debt which is payable by the Corporate Debtor to the Financial Creditor. Under the said circumstances, this Tribunal is left with no other option but to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

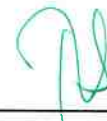
15. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016

16. The Financial Creditor has proposed the name of one **S. KRISHNAN**, having Registration Number [**IBBI/IPA-002/IP-N00784/2018-19/12433**] as *Interim Resolution Professional*

(IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

17. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent any of its assets or any legal right or beneficial interest therein;

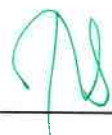


- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

18. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.



(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

19. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order

for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

20. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond