

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-559/ND/2021

U/S. 7 of the IBC, 2016 and Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

YES BANK LIMITED

Registered office at:

**Yes Bank House, Off Western Express Highway,
Santacruz East,
Mumbai – 400055**

...Financial Creditor

Versus

PRESIDIUM EDUCATIONAL INSTITUTION PRIVATE LIMITED

Regd. Office:

**11/7 West Punjabi Bagh
New Delhi – 110026**

...Corporate Debtor

Delivered on: 29.11.22

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)

Appearances:

Financial Creditor : Adv. Sanjay Bhatt

Corporate Debtor: Adv. Jai Mohan

ORDER

Per: Dr. Binod Kumar Sinha, Member (Technical)

1. The instant application bearing IB-559/ND/2021 is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditors, M/S Yes Bank Limited are seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., Presidium Educational Institution Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate Debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Financial Creditor/Petitioner has averred as follows: -

- a. It is submitted that Presidium Educational Institution Private Limited i.e., Corporate debtor approached Yes Bank Private Limited i.e., Financial Creditor for grant of loan facility for the purpose of refinance of existing facility utilized for upgradation, renovation and



expansion of schools and reimbursement of Capex already incurred in school and balance towards future Capex in school. The Financial Creditor subsequently sanctioned the loan facility in favour the Corporate Debtor and to its group Companies also.

b. It is submitted that, in pursuance of the sanction letter dated 30.12.2017, Financial creditor and Corporate debtor executed Term Loan agreement. Financial creditor had sanctioned two term loans to the Corporate Debtor vide facility letter No. YLB/DEL/1805/2017-18 dated 30.12.2017. Later, the Corporate Debtor executed the Loan Agreement dated 10.02.2018 with the applicant. The details of the term Loan is detailed below:

- I) TERM LOAN I (TL I) – Rs. 63,500,000/-
- II) TERM LOAN (TL II) – 486,500,000/-

c. Pursuant to this, vide novation agreement dated 28.08.2018, Yes Bank limited assigned Term Loan I of Rs. 63,500,000/- and part of Term Loan – II – Rs. 25,00,00,000/- to Aditya Birla Finance Limited. Therefore, the present exposure of Yes Bank Limited is as Term Loan I – Nil and Term Loan II for Rs. 236,500,000/-.

d. Further, the Applicant, Yes Bank Limited had also sanctioned various term loans to the group entities of the Corporate Debtor. The exposure of Yes Bank Limited in the group entities is reproduced below:



1. Term Loans to Mothers Pride Education Personna Pvt. Ltd. is INR 20,84,00,000.00
 2. Term Loans to Mothers Pride Education Institution Pvt. Ltd. is INR 8,60,00,000.00
 3. Term Loans to Scholartube Education and Learning Solutions Pvt. Ltd. is INR 22,80,00,000
 4. Term Loans to Presidium Educational and Charitable Trust is INR 14,11,00,000
- collectively the "Group Company Debt")

- e. It is further submitted that on 29.09.2019, Corporate debtor was declared as a Non-Performing Asset for the non-payment of the Terms Loans.
- f. It is averred that thereafter, in view of the non-payment of the term loans by Corporate debtor, the Financial Creditor issued a Loan Recall Notice upon the Corporate debtor dated 08.11.2019 to pay the entire remaining unpaid Loan.
- g. It is further submitted that on 22.10.2020, the Financial creditor approached Debts Recovery Tribunal for the recovery of Loan amount and adjudication of DRT is still pending. Date of Default is 29.09.2019

3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 28.10.2021. Corporate Debtor has also filed its reply to the captioned petition.

4. We have heard the arguments advanced by Ld. Counsels appearing for Financial creditor as well as for the Corporate debtor and also perused the record.

5. The Financial Creditor's claim is based on the facts that Corporate Debtor had approached the 'Applicant' to avail loan facility for the purpose of refinance of existing facility utilized for upgradation /renovation and expansion of schools, reimbursement of Capex already incurred in the schools, and balance towards future Capex in the schools. On consideration of the request made by the Corporate Debtor, the Applicant sanctioned two term loans to the Corporate Debtor vide sanction letter dated 30.12.2017 bearing YBL/DEL/1805/2017-18 ("Sanction Letter"). In terms of the sanction, the Corporate Debtor entered into and executed the term loan agreements dated 10.02.2018 ("Term Loan Agreements") setting out the terms and conditions of such term loans. Further, Applicant had also sanctioned loan to group entities of the Corporate Debtor.

6. Per contra, Corporate debtor has raised two contentions:-

I. Present application is not maintainable as Financial creditor has failed to prove existence of Default mentioned u/s sec 7(3)(a) of IBC code, 2016.



II. Documents on the basis of which the instant application is filed, are not binding upon the Corporate Debtor as there is a pre-existing dispute of debt as Financial creditor has already initiated the proceedings under Recovery of Debt and Bankruptcy Act and have also instituted certain proceedings under section 138 of NI Act and under Arbitration and Conciliation Act, 1996.

7. In regard to the first issue raised by the corporate debtor which relates to existence of "Default" it is pertinent to refer to the definition of default stipulated u/s 3(12) of IBC, 2016:

"(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not by the debtor or the corporate debtor, as the case may be".

Thus Section 3(12) exclusively defines that non-payment of debt either whole or any part or instalment which has become 'due' would be termed as default. It is observed that in pursuance of the sanction letter dated 30.12.2017, Financial creditor and Corporate debtor executed Term Loan agreement on 10.02.2018 being Term Loan I (TL I) amounting to INR 63,500,000/- and Term Loan II. TL II was disbursed by Yes Bank Limited in favour of the Corporate Debtor on 22.03.2018 for an amount of INR 435,551,409/-and INR 50,948,419/- on 29.08.2018and the Term Loan Agreement detailing the terms and conditions of loan facility was entered into between Financial Creditor and Corporate debtor. Pursuant to this, vide novation agreement dated August 28, 2018, Yes Bank



Limited assigned the entire TL I of INR 63,500,000 and part of TL II - INR 25,00,00,000/- to Aditya Birla Finance Limited. Further, Applicant invoked the guarantee of Corporate debtor vide notices dated 08.11.2019. Despite issuance of such notices, Corporate debtor did not repay the amount. Further, it is observed from Annexure A-12 and Annexure A-52 of the instant Application being true copies of Facility letter for TL I & TL II as authorised by the Financial creditor to the corporate debtor that these Facility letters are duly signed and acknowledged by the Director of Presidium Educational Institution Private Limited i.e., Corporate debtor which proves that Corporate debtor was fully aware of the terms and conditions with respect to the loan facilities. Further, on 29.09.2019 in view of the non-payment of the Term Loans, the applicant declared the account of the Corporate debtor as a Non-Performing Asset ('NPA'). A certified copy of the computation sheet for working of interest and days of default for classification of the Corporate Debtor's account as NPA is reproduced below:-

TO WHOMSOEVER IT MAY CONCERN
OUTSTANDING BREAK-UP OF YES BANK LIMITED AS ON JULY 20, 2021 (INR)

Name of entity (as on July 20, 2021)	Date of classification as NPA and days since default	Principal	Interest	Total outstanding
Presidium Educational Institution Private Limited	September 29, 2019 and 660 days	289,893,314.71	9,521,198.98	299,414,513.69
Presidium Educational and Charitable Trust		151,385,704.76	5,413,190.78	156,798,895.54
Mothers Pride Education Institution Private Limited		105,223,860.30	3,463,009.80	108,686,870.10
Mothers Pride Education Personna Private Limited		246,480,414.18	8,070,690.25	254,551,104.43
ScholarTube Education and Learning Solutions Private Limited		267,412,328.42	8,794,152.58	276,206,481.00


For Yes Bank Limited
 Authorized Signatory






It is pertinent to mention that the nature and scope of enquiry for the purposes of admission and initiation of the CIRP under Section 7 of the Code has already been well settled and laid down by the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd vs. ICICI Bank and Anr.(2018) 1 Supreme Court Cases 407***. The Hon'ble Supreme Court has laid down that the scope of enquiry by the Adjudicating authority under Section 7 of the Code is confined only to two issues i.e. (1) completeness of the application with respect to the form and manner prescribed under the Code along with the requisite fee and (2) occurrence and existence of financial default on the basis of evidence produced by the financial creditor. Apart from this, no other issue or question is required to be examined for admission of an application under Section 7 of the Code. The relevant extract is as hereunder:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. It is at the stage of



Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

8. In the light of the decision referred to **supra**, when we consider the submissions of the Financial Creditor for the claims towards the Loan amount disbursed to the Corporate debtor, it appears to us that the failure of the Corporate debtor to make payment of the Loan amount will be considered as 'Default'. By analysing the facts of the case and referring decision of the Hon'ble Supreme Court we are inclined towards the view that present application is maintainable u/s 7 of IBC, 2016.

9. The second issue raised by the Corporate debtor relates to initiation of multiple proceedings under Recovery of Debt and Bankruptcy Act, Negotiable Instrument Act as well as under Arbitration and Conciliation Act, 1996. In this



connection , we observe that the provisions of IBC, 2016 have an overriding effect on all other laws for the time being in force as also held by Hon'ble Supreme Court in the matter of **Innoventive (Supra)** as under:

"it is clear that the provisions of the IBC will prevail over any other law where a conflict exists by the bare perusal of the non-obstante provision contained in Section 238 of the IBC, which unambiguously provides that the IBC will apply notwithstanding anything inconsistent therewith contained in any other law for the time being in force".

10. Further, this Adjudicating Authority and the Hon'ble National Company Law Appellate Tribunal (hereinafter, "NCLAT") in catena of cases have held that pendency of proceedings under the DRT Act has no bearing in so far as admission of application under Section 7 of the Code is concerned. The latest judgment of the Hon'ble NCLAT dealing with the said issue is the case of **Amar Vora vs City Union Bank Ltd., bearing Company Appeal (AT) (CH) (Ins) No. 130 of 2022** dated 11.05.2022 wherein it has been held that a financial creditor can file an Application under Section 7 of the Code against a Corporate Debtor despite proceedings being pending before DRT by virtue of Section 238 of the Code. Relevant extract from the aforesaid ruling of the Hon'ble NCLAT has been reproduced as below:



"The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under: "The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law." In view of the above provision of law the financial Creditor/ Operational Creditor/ Corporate Persons can file an application under Section 7,9& 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is having overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant." In view of above judgement,



pendency of a suit before DRT shall not be a bar against initiation of CIRP u/s 7 of the IBC, 2016.

11. The Corporate debtor has also raised a contention regarding the quantum of debt and default which is subject to proceedings filed under section 9 of the Arbitration and Conciliation Act, 1996. However, on going through the record, we found that, the Applicant is not a party to the Arbitration Agreement which is executed between the Corporate Debtor and M/s Aditya Birla Finance Ltd. and accordingly, the Applicant has only been arrayed as a proforma party and not a contesting party in the petition filed by ABFL under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") bearing OMP (1) 418/2019 ("Petition") titled as "Aditya Birla Finance Limited vs Presidium Educational and Charitable Trust &Ors." before the Hon'ble High Court of Delhi. This fact has also been recorded in the Order dated 06.12.2021 passed by the Hon'ble High Court of Delhi in said Petition which is reproduced below:

"The Court is further informed that the withdrawals from the escrow accounts have been carried by Respondent No. 20 that is not a party to the arbitration agreement. While Respondent No. 20 is free to take recourse to or pursue remedies in accordance with law, which has already been initiated, they would also not operate the escrow accounts without the permission of the learned Arbitrator or direction from the court of competent jurisdiction."



12. Thus, in view of the foregoing, we have no hesitation to hold that the contentions raised by the corporate debtor are not tenable in law or fact, and they cannot be taken as valid grounds for rejection of instant application. The financial creditor has placed adequate evidence to establish that there exists a Financial Debt of an amount exceeding the threshold provided U/s 4 of the Code, which the corporate debtor was liable to pay but defaulted in making such payment. Accordingly, we hereby admit the instant application filed by Financial Creditor U/s 7 of the IBC, 2016.

13. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Ganga Ram Agarwal having Regn. No. IBBI/IPA-002/IPN00874/2019-2020/12777 as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

14. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:



- 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's 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 (54 of 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.
- e. The explanation below section - 14 (1) also stipulates "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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

15. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

16. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the Code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

17. The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.



18. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

19. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

20. The CP IB-559/ND/2021 is hereby admitted.


(Dr. Binod Kumar Sinha)

Member (Technical)


(Sh. Bachu Venkat Balaram Das)

Member (Judicial)