



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

C.P. No. 1150/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

Beacon Trusteeship Limited

Having registered office at: 4C & D,
Diddhivinayak Chambers, Gandhi
Nagar, Opp. MIG Cricket Club Bandra
(East), Mumbai 400051

.....**Financial Creditor**

Vs

**Nirmal Lifestyle (Mulund) Private
Limited**

CIN: U74999MH2007PTC177019

Having registered office at: 2nd Floor,
Nirmal Lifestyle Head Office, LBS Marg,
Mulund (West), Mumbai- 400080

.....**Corporate Debtor**

Reserved for order on: 30.06.2023

Order delivered on : 11.07.2023

Coram:

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

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

For the Financial Creditor: Mr. Nirav Shah a/w Ms. Saloni Shah i/b
DSK Legal

For the Corporate Debtor: Mr. Gautam Ankhad a/w Mr. Ashok Paranjpe,
Ms. Abha Patel i/b MDP Partners.

Per: Shri H.V. Subba Rao, Member (Judicial)



1. This Company petition is filed by *Beacon Trusteeship Limited* (hereinafter called as “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Nirmal Lifestyle (Mulund) Private Limited* (hereinafter called as “Corporate Debtor”) 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 for resolution of an unresolved Financial Debt of Rs. 7,238,293,534.11/- (Rupees Seven Hundred and Twenty-Three Crores Eighty-Two Lakhs Ninety-Three Thousand Five Hundred and Thirty-Four and Eleven paise only).
2. The brief submissions of Financial Creditor are as under:
 - 2.1. The above Company Petition is filed by the Applicant/Financial Creditor in its capacity as Debenture Trustee under two Debenture Trust Deeds dated 22 March 2018 (“DTD 1”) and 28 March 2018 (“DTD 2”) (collectively referred to as “Debenture Trust Deeds”) respectively and executed by and between the Financial Creditor and the Corporate Debtor. It seeks the commencement of corporate insolvency resolution process (CIRP) against the Corporate Debtor, who has defaulted in redeeming the said debentures.
 - 2.2. The said debentures under the Debenture Trust Deeds were issued on a private placement basis to raise funds for meeting the project development expenses of the project “Olympia” at Mulund (as more particularly described in the documents annexed to this application) which is owned and being developed by M/s Nirmal Developers, a partnership firm in which the Corporate Debtor is a majority partner (owner of 99% partnership interest). The said debentures

and the redemption thereof was secured inter alia by all rights, title, and interest in the immovable and moveable property forming a part of the said project.

- 2.3. The Corporate Debtor defaulted in redeeming the debentures on 27th June, 2022 and an amount aggregating to Rs. 6,61,13,64,079.11 (Rupees Six Hundred Sixty One Crore Thirteen Lakhs Sixty four thousand and Seventy nine and Eleven paise only) under DTD 1 and an amount aggregating to Rs. 62,69,29,455.00 (Rupees Sixty Two Crore Sixty Nine Lakhs Twenty Nine Thousand Four Hundred and Fifty only) under DTD 2. The Corporate Debtor is liable to pay a sum of Rs.7,238,293,534.11/-. Hence this petition.
3. The Corporate Debtor filed affidavit in reply through Mr. Chandrakant Shah, authorized representative of the Corporate Debtor. The important paras of the reply are extracted hereunder for ready reference:

A. The Financial Creditor is a Secured Creditor

- 3.1. It is submitted that the alleged debt as claimed by the Petitioner in the Petition under Reply, is a secured debt inasmuch as the Petitioner is duly secured by sufficient security, the value of which is far greater than the alleged claim of the Petitioner. The Petitioner is a fully secured creditor as the Corporate Debtor has, inter alia, mortgaged, all the right, title, interest, and benefits accruing from the mortgaged property as more particularly described in Schedule I and II of the Debenture Trust Deed dated 22nd March 2018 bearing No. 3890 of 2018 and Schedule I and II of the Debenture Trust Deed dated 28th March 2018 bearing No. 4222 of 2018, both executed by and between the



Financial Creditor, the Corporate Debtor, Nirmal Developers and Nirmal Lifestyle Limited (“Mortgaged Properties”).

- 3.2. It is pertinent to note that as stipulated in the Debenture Trust Deed dated 22nd March 2018 and that of Debenture Trust Deed dated 28th march 2018 (“Debenture Deeds”), the Debenture Trustee therein, i.e. the Financial Creditor herein is more than adequately secured by way of the Mortgaged Properties, inasmuch as the Debenture Deeds provided for the Mortgaged Properties which were valued much higher than that of the outstanding principal amount of the debentures together with interest and all other charges applicable thereon, at all times during the subsistence of the Debenture Deeds. Thus, in view of the above, it is abundantly clear that the Financial Creditor is adequately secured against any alleged debts owed to it. In view of the clauses contained in the Debenture Deeds, the value of the Mortgaged Properties are evidently much higher than the value of the outstanding principal amount of the Debentures together with interest and all other charges, any which ensures abundant security interest in favour of the if a Financial Creditor.
- 3.3. It is apposite to note that the Hon’ble National Company law Tribunal in **Beacon Trusteeship Limited v Neptune Ventures and Developers Private Limited, Company Petition (IB) No. 933 of 2020 (who is the same corporate person as the Financial Creditor herein)** whilst dealing with a similar matter wherein the financial creditor was secured by way of sufficient security and security documents vested with the financial creditor the power to enforce the security interest upon the event of a default, held



that a petition seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) was not maintainable and that the financial creditor has recourse under law to recover all the monies due to it. The Hon’ble Tribunal was pleased to dismiss the Company Petition No. 933 of 2020 and held as under:

“27. That the petitioner has absolute rights in the mortgaged property and cannot initiate any action under section 7 upon non-payment of dues under the Debenture Trust Deed, the Petitioner has agreed to recourse to sell the mortgaged assets and recover the monies due

28. in view of the give factual matrix, this Bench conclude upon the non-payment under the Debenture Trust Deed, there is no default and the petitioner has agreed to recourse as envisaged under the Debenture Trust Deed cum Mortgage and hence Petition is dismissed”

- 3.4. The corporate debtor submits that the Order dated 7 October 2021 is binding upon the Hon’ble Tribunal especially since it is also based on similar facts and circumstances and thus ought to be followed while dealing with the present Petition. Basis the aforementioned, it is aptly clear that the Financial Creditor is entitled to enforce its security interest by several means, including selling off the property in order to recover its dues. The powers granted to the Financial Creditor, however, do not extend and encompass filing of the present petition as the same would put the Corporate Debtor in a precarious position whereby the Corporate Debtor would be subjected to CIRP merely for recovery of alleged dues despite

having provided for adequate and more than sufficient security.

B. No alleged debt due to the Financial Creditor

- 3.5. The Corporate Debtor submits that Vide a Term Sheet executed in favour of the Corporate Debtor, Edelweiss had granted a facility aggregating to Rs. 400 Crores in favour of the Corporate Debtor herein which was to be utilised for development of a project named 'Olympia' which is situated at CTS No. 4/1, 4/2, 4/3 and 4/5 on land admeasuring 35371.4 sq.mtrs, in Mulund ("Olympia/ said Project"). Hereto annexed and marked as Exhibit "B" is a copy of the Term Sheet encapsulating the aforementioned loan of Rs. 400 Crores which was granted to the Corporate Debtor for development of the said Project.
- 3.6. It is most pertinent to note that Edelweiss subsequently failed to disburse the entire loan under the Term Sheet and only disbursed Rs. 237.50 crores (215 crores and 22.5 crores in the form of NCD's) and Rs. 57,50,00,000/- (Rupees Fifty Seven Crores and Fifty Lakh only) out of the full amount of Rs. 400 Crores, for which the instant Petition has been filed. Therefore, out of Rs. 400 Crores which was provided for under the Term Sheet, Edelweiss had only disbursed an aggregate amount to the tune of Rs. 295 Crores which consequently prevented and precluded the Corporate Debtor from having developed the said Project. Edelweiss was well aware of the fact that the loan availed by the Corporate Debtor was essential, material and crucial in order to ensure the kickoff and smooth continuation of the development of the said Project and therefore, failure of disbursal by Edelweiss had resultantly jeopardised the kick-off of the



development of the said Project. In view of the said fact is evident, that Edelweiss had itself miserably failed to comply with its obligations under the Term Sheet and therefore consequently there exists no debt payable by the Corporate Debtor and the instant Petition thus deserves to be dismissed with imposition of exemplary costs inasmuch as the Petitioner herein is guilty of *suppression veri*.

- 3.7. Moreover, pertinently there exists no alleged debt which is due to the Financial Creditor which is allegedly claimed by the Financial Creditor in the captioned Petition. As per the Redemption and Tenure as provided for under Schedule III of the Debenture Deeds, the redemption of the debentures were contemplated to commence on the 33rd month from the end of the month from the date of Allotment, i.e. the date on which the Corporate Debtor passed a resolution allotting the debentures (Resolution passed on 20th March 2018 and therefore the 33rd month would be December 2021). However, the Financial Creditor has miserably failed to appreciate the fact that prior to the completion of the 33 month from the Date of Allotment, a one-year period commencing from March 2020 to March 2021 being the period affected by COVID- 19 and the resultant lockdown, which ought to have been considered and a setoff for a period of 12 months commencing from December 2021 to December 2022 ought to have been provided in view of the prevalent supervening circumstances. In view of the above, the alleged date of default, i.c. 27th June 2022 can in no manner be considered as the date of default since the offset of the aforementioned one year period would conclude on



December 2022. Therefore, the entire case of the Financial Creditor is thoroughly baseless and concocted.

C. Misuse of the rigours of the Code as a recovery mechanism

- 3.8. Without prejudice to the aforesaid, I submit that a bare perusal of the security documents referred to in the Petition would indicate that the transaction between the Financial Creditor and the Corporate Debtor contemplates for a consequence in the event of any default, if any. Thus, by filing the captioned Petition, the Financial Creditor is attempting to divert from the understanding reached inter-se between the parties, in order to unduly harass the Corporate Debtor on the basis of the alleged debt claimed by the Financial Creditor.
- 3.9. The Financial Creditor is misusing the process under law and attempting to misuse the rigours of the Code by initiating recovery proceedings against the Corporate Debtor which is in stark contravention of the spirit and intent of the Code. In fact, the Hon'ble Supreme Court of India and the Hon'ble National Company Law Appellate Tribunal have laid down in a catena of judgments, that the Code is not intended to be misused as a recovery mechanism. In *Transmission Corporation of Andhra Pradesh v. Equipment Conductors and Cables Ltd.* The Hon'ble Supreme Court observed as Follows:

“15. In a recent judgment of the court in Mobilox Innovations Private Limited v Kirusa Software Private Limited, this court has categorically laid down that IBC is not intended to a substitute to recovery forum”



D. The judgment of the Hon'ble Supreme Court in the case of Vidharbha Industries Power Limited v. Axis Bank Limited

3.10. The Corporate Debtor places strong reliance on the judgment of Vidharbha Industries Power Limited v. Axis Bank Limited [Civil Appeal No. 4633 of 2021; 2022 SCC OnLine SCC 841] whereunder, the Hon'ble Supreme Court has held that the Hon'ble Adjudicating Authority has the discretion to reject the petition filed by the financial creditor seeking initiation of CIRP against the corporate debtor after having considered relevant factors including the feasibility of initiation of CIRP and overall financial health and viability of the corporate debtor under its existing management. The relevant paragraphs have been reproduced hereinbelow for the sake of convenience:

“60. There can be no doubt that a Corporate Debtor who is in the red should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall financial health of the Corporate Debtor are not extraneous matters

62. In our view, the Appellate Authority (NCLAT) erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there had been a debt and the Corporate Debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT)



was require to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of APTEL referred to above and the over all financial health and viability of the Corporate Debtor under its existing management.”

- 3.11. Thus, in light of the judgment of the Hon'ble Supreme Court of India in Vidharbha Industries Power Limited v. Axis Bank Limited, this Hon'ble Tribunal is bound to exercise its discretion, and consider the relevant factors, inter-alia, the alleged financial debt claimed by the Financial Creditor herein is duly secured by sufficient security, the value of which is far greater than the alleged outstanding debt as contemplated in the Debenture Deeds.
- 3.12. The Corporate Debtor further submits that upon perusal of the above submissions and objections, it is clear that the captioned petition deserves to be rejected.

FINDINGS

1. Heard Mr. Nirav Shah, counsel appearing for the Financial Creditor and Mr. Gautam Ankhad, counsel appearing for the Corporate Debtor and perused the record.
2. Apart from filing the affidavit in reply in the main Company Petition, the Corporate Debtor also mischievously filed an Interlocutory Application bearing I.A. No. 2726/2023 on the date of final hearing seeking direction to the Financial Creditor to provide inspection of the original documents mentioned in the I.A. from serial nos. 1 to 18 deliberately to stall the disposal of the above Company Petition on the ground that the documents mentioned in the list are not sufficiently stamped



and cannot be looked into by this Tribunal in view of recent judgment of the constitutional bench of the Hon'ble Supreme Court in *N.N. Global Mercantile Pvt. Ltd. V. Indo Unique Flame Ltd. & Ors. 2023 SCC Online SC 495*.

3. When the above application was strongly resisted by the counsel appearing for the Financial Creditor and this tribunal, counsel appearing for the Corporate Debtor insisted the opposite counsel at least to confirm that they are not relying on the above documents which were sought for inspection. Accordingly, the counsel appearing for the Financial Creditor conceded that they are not relying on most of the documents mentioned in Serial Nos. 1 to 18 except the following documents which are appropriately stamped even according to the case of the Corporate Debtor. Therefore, the above I.A. no longer survive and accordingly dismissed.

Sr. No.	Document	State in which stamp duty is paid	Stamp duty paid	Schedule and stamp duty payable as per the Maharashtra Stamp Act 1958
13.	Debenture Trusteeship Agreement dated 20 th March 2018 (Ex. D/Pg.18)	Maharashtra	Rs. 600	Appropriately Stamped
14.	Debenture Trust Deed cum Mortgage Deed dated 22 nd March 2018 (Ex.G/Pg. 40)	Maharashtra	Rs. 10,00,500/-	Appropriately Stamped



16.	Escrow Agreement dated 18 th July 2018 (Ex. M/Pg. 288)	Maharashtra	Rs. 600	Appropriately Stamped
17.	Debenture Trust Deed cum Mortgage Deed dated 28 th March 2018 (Ex.P/Pg. 328)	Maharashtra	Rs. 1,00,500/-	Appropriately Stamped

4. The counsel appearing for the Financial Creditor further submitted that apart from the above documents at Serial. No. 13, 14, 16 & 17 they have also filed the NESL (National E-Governance Services Limited) certificate which is annexed at Page No. 36 to 39 to the Company Petition to prove the existence of 'Debt' and 'Default'.
5. Now let us deal with the defences raised by the Corporate Debtor. The careful reading of the affidavit in reply filed by the Corporate Debtor makes it abundantly clear that most of the pleas raised by the Corporate Debtor are routine and general denials. One of the main contentions of the Corporate Debtor is that the Debt is completely secured by the security of immovable property and therefore the Financial Creditor can realise their amount by enforcing their security interest and not through filing Section 7 Application. In order to buttress their argument they have relied upon the order passed by coordinate bench of Bombay in *Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited In Company Petition (IB) No. 933 of 2020*.



In this regard, it is appropriate to mention here that the same plea was raised by another group entity of the Corporate Debtor namely Nirmal Lifestyle Reality Pvt ltd. in CP (IB) No. 315 of 2019 before this Bench by relying on the above order of *Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited*. This bench vide its order dated 03.12.2021 rejected the above contention by relying on another order in *IDBI Trusteeship Services Ltd. V. Ornate Spaces Pvt. Ltd.* passed by same bench of *Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited* which is contrary and admitted the CP 315 of 2019 and ordered CIRP against the other group entity of the Corporate Debtor namely Nirmal Lifestyle Reality Pvt ltd which was carried in appeal in Company Appeal (AT) (Insolvency) No. 1085 of 2021 before the Hon'ble NCLAT and Hon'ble NCLAT confirmed the admission order passed by Adjudicating Authority vide order dated 12.01.2022 and the CIRP proceeding is continuing against the other group entity namely Nirmal Lifestyle Reality Pvt ltd before this Bench. Therefore, the above contention of the Corporate Debtor relying on the judgment of the *Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited* is not legally tenable and is liable to be rejected since the view of this bench is upheld by Hon'ble NCLAT in Nirmal Lifestyle Reality Pvt ltd case.

6. The other contention is that Edelweiss having granted facility aggregating to Rs. 400 crores to the Corporate Debtor for their project, disbursed only Rs. 237.50 crores in the form of NCD's out of full amount of Rs. 400 crores which consequently prevented and precluded the Corporate Debtor for completing the project. The above plea of the Corporate Debtor is also not legally tenable and is liable to be rejected in view of the law laid



down by Hon'ble NCLAT in State Bank of India Vs. N.S. Engineering Projects (P). Ltd. dated 03.02.2023.

7. The last contention of the Corporate Debtor is that this tribunal has discretion to dismiss the above Company Petition in the light of the judgment of Hon'ble Supreme Court in *Vidharbha Industries Power Limited Vs. Axis Bank Limited*. In this regard, it is appropriate to mention here that not only the present Corporate Debtor i.e. Nirmal Lifestyle (Mulund) Pvt. Ltd. but also other entity of the group of the Corporate Debtor namely Nirmal Lifestyle Reality Pvt Ltd is undergoing CIRP. Hence, the question of applying the judgment of Vidharbha Industries Power Limited in this case dose not arise and strictly speaking the above Company Petition has to be admitted, if we go by the ruling of Vidharbha Industries Power Limited, since the entire group companies are in financial stress. Thus, all the above defences raised by the Corporate Debtor dose not hold any water and are liable to be rejected.
8. The Financial Creditor has filed the record of default issued by the NESL and the relevant documents namely Debenture Trusteeship Agreement dated 20th March 2018, Debenture Trust Deed cum Mortgage Deed dated 22nd March 2018, Escrow Agreement dated 18th July 2018 and Debenture Trust Deed cum Mortgage Deed dated 28th March 2018 to prove the existence of 'debt' and 'default'. In addition to the above, the Corporate Debtor is also in a way admitting the existence of "debt" and "default" and opposing the above CP on the basis of above referred flimsy ground which are devoid of merits and liable to be rejected.
9. For the aforesaid reasons, this bench has no hesitation in holding that the Financial Creditor has established the



existence of 'Debt' and 'Default' in this case and the Financial Creditor has also suggested the name of the proposed IRP as per the requirements of the Code in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary legal requirements for admission and this bench did not find any valid legal reason to dismiss the same. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) 1150 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Nirmal Lifestyle (Mulund) Private Limited*.
- b. This Bench hereby appoints **Mr. Amit Vijay Karia** (amit.karia@yahoo.co.in / amit.karia@incorpadvisory.in) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-02600/2021-2022/13969 having registered office at: Flat No. 202, Padmalaya Apartments, Pandit Colony Lane 1, Behind Ananda laundry, Nashik, Maharashtra, 422002 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.10 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 only 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, 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)