NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 739 of 2022

[Arising out of the Impugned Order dated 27.06.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in CP (IB) No. 2440/MB/C-I/2019]

In the matter of:

Rahul H. Mehta
S/o Hasmukh Mehta, Age 49 years,
Residing at B-23, Happy Home, Sai Baba
Nagar, Opp Sweeker Hotel, Borivali West,
Mumbai- 400092

...Appellant

Versus

1. **Gajendra Investment Ltd.**
   Through its Authorised Representative,
   Aidan Building, 1st Dhobi Talaolane,
   Mumbai- 400002.

   ...Respondent No.1

2. **Rushabh Civil Contractors Pvt. Ltd.**
   Through the Insolvency Resolution Professional (IRP)
   G-31, Prime Mall, Beside Irla-Church,
   Irla Road, Vile Parle (West), Mumbai- 400056

   ...Respondent No.2

Present :

For Appellant : Mr. Abhijeet Sinha Sr. Advocate with Mr Malak Bhatt, Ms. Neeha Nagpal and Mr. Mandeep Singh, Advocates.

For Respondent : Mr. Devashish Chauhan, Mr. Paras Mithal and Mr. Gaurav Raj, Advocates.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 27.06.2022 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in CP (IB) No. 2440/MB/C-I/2019. By the impugned order, the Adjudicating Authority has admitted the Section 7 application filed by Gajendra Investment Ltd. against the Corporate Debtor-Rushabh Civil Contractors Pvt. Ltd on the ground of non-payment of debt that had become due and payable. Aggrieved by the impugned order, the present appeal has been preferred by the ex-Director of the Corporate Debtor.

2. Put briefly, a Section 7 application had been filed by the Financial Creditor-Gajendra Investment Ltd. (**"GIL"** in short) seeking initiation of Corporate Insolvency Resolution Process (**"CIRP"** in short) against Corporate Debtor-Rushabh Civil Contractors Pvt. Ltd. (**"Rushabh"** in short). The Respondent No. 1-Financial Creditor had given an amount of Rs 3.77 Cr. to the Appellant-Corporate Debtor on 14.09.2016 and the Corporate Debtor having failed to repay the outstanding sum, a Demand Notice was issued to the Corporate Debtor seeking repayment of the outstanding amount alongwith interest. Since the amount was not paid back by the Corporate Debtor within the stipulated time of 3 days, Financial Creditor claimed that a default had

occurred on 19.06.2019 amounting to Rs 1.51 Cr. in their Section 7 application which was admitted by the Adjudicating Authority on 27.06.2022. Assailing this impugned order, the present appeal has been preferred on 04.07.2022.

3. Making his submissions, Shri Abhijeet Sinha, the Ld. Senior Counsel for the Appellant pressed that the Financial Creditor had failed to prove the existence of any financial contract between them and the Corporate Debtor and in the absence of any agreement or financial contract, the Respondent No.1 has clearly failed to establish the existence of any debt or default. Assertion was also made that the books of account of the Financial Creditor showed that the amount which was due and payable from the Corporate Debtor was only Rs 34.99 lakhs. However, the amount claimed by the Financial Creditor both in the Demand Notice as well as in the Section 7 application was different from the amount reflected in the Ledger Account of the Corporate Debtor as maintained in their own books of account. While no interest was claimed in the books of account of the Financial Creditor after 31.04.2017, however, the Section 7 application was filed claiming 18% interest thereby inflating the debt amount arbitrarily to Rs 1.51 Cr. These serious contradictions and variations in the principal amount of debt and interest charged thereon renders the Section 7 petition non-maintainable. It has also been contended that the alleged debt had already been settled and discharged by way of an MoU entered into with a sister concern company of the Financial Creditor, namely, Centrio Life Spaces Ltd. (**"Centrio"** in short) which MoU had clearly stipulated that the amount claimed by the Financial Creditor was to be adjusted against the amount outstanding payable by Centrio to the Corporate Debtor. Thus, the liability of the Corporate

Debtor stood discharged and there was no question of debt and alleged default. It was also submitted that the transaction between the Corporate Debtor and Financial Creditor were in the nature of mere advances and not a loan and therefore not a financial debt. Without any proof of debt or default and without any agreement to prove the event of debt or default, the application of the Financial Creditor has no legs to stand on. Hence it was pointed out that the impugned order admitting the Section 7 application suffers from infirmities. It is therefore the contention of the Appellant that the Section 7 proceedings against them was filed by the Respondent No.1 to coerce them into settling and giving in to unreasonable demands of the Financial Creditor and that it was filed as counterblast to the Section 7 petition filed by the Corporate Debtor against Centrio for non-payment of financial dues of Rs 12.39 cr by them.

4. Refuting the submissions made by the Appellant, Shri Devashish Chauhan, the Ld. Counsel for the Respondent No.1 submitted that the Financial Creditor had provided financial assistance to the Corporate Debtor from time to time. The Financial Creditor had addressed a letter dated 14.06.2019 to the Corporate Debtor asking the Corporate Debtor to pay the outstanding debt of Rs 1.51 Cr being the debt outstanding as on 31.05.2019. This letter was received by the Corporate Debtor on 15.06.2019. This letter provided 3 days' time to the Corporate Debtor to make the payment. However, the Corporate Debtor neither responded to the letter nor made payment to the Financial Creditor following which the Financial Creditor filed the Section 7 application holding the date of default to be 19.05.2019 which has been correctly admitted by the Adjudicating Authority.

5. It is the contention of the Respondent No.1 that the Corporate Debtor had clearly acknowledged the receipt of assistance from the Financial Creditor in their balance sheet for the year ending 31.03.2017 which was filed with the Registrar of Companies (**"RoC"** in short). The assistance received was reflected under the heading *"Short term Borrowings-Inter Corporate loans"* and the balance sheet further reflected that *"all the above loans are repayable on demand"*. It has also been asserted that the Corporate Debtor had confirmed the statement of accounts dated 15.04.2017 which clearly evidences debt. It was stated that the first amount of assistance of Rs 3.77 Cr. was extended by the Financial Creditor to the Corporate Debtor on 14.09.2016 and these transactions continued on till 31.05.2019. Though the Corporate Debtor did not pay interest amount for the entire period of debt, however, the Corporate Debtor had deposited TDS amount of Rs 2,66,558/- on 01.08.2018 and Form No. 26AS shows the TDS deposit on interest having being made. This also substantiates that the assistance to the Corporate Debtor was an interest-bearing loan. The Corporate Debtor has also refunded the financial assistance from time to time which clearly evidences that the assistance was a debt which was being discharged from time to time. The last debt amount repaid by the Corporate Debtor to the Financial Creditor was on 08.01.2018. Hence, it was also contended by the Respondent No.1 that the Section 7 petition was filed within the period of limitation.

6. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

7. The short point for consideration before us is whether in the given facts of the case the application under Section 7 of IBC filed by the Appellant was maintainable against the Corporate Debtor.

8. Before we proceed to answer the above question, a quick glance at certain provisions of the IBC which would be relevant and constructive in considering the matter is extracted below:

Sections

3(6) *"**claim**" means—*

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

3(11) *"**debt**" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

3(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 paid by the debtor or the corporate debtor, as the case may be;*

5(7) "financial creditor" *means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

5(8) "financial debt" *means a debt alongwith 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 nonrecourse 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-clauses (a) to (h) of this clause;

9. Having noted the relevant statutory provisions, we would also like mention that the Adjudicating Authority has relied on the judgement of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. Vs ICICI Bank (2018) 1 SCC 407*** ('***Innoventive judgement***' in short) to understand when a financial creditor can trigger the provisions of Section 7 of IBC against the Corporate Debtor. We would also like to be guided by the well settled legal precepts laid down by this landmark judgement wherein the incidence of financial debt and default has been lucidly explained by observing as below:

> *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors*

and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

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. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. 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.

XXXX XXXX XXXX XXXX

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise".

10. We now come to the first limb of argument raised by the Appellant that in the absence of any Financial Contract executed between the Corporate Debtor and Financial Creditor, whether a financial debt can be said to have been demonstrated by the Financial Creditor and whether in such circumstances the Adjudicating Authority could have adjudicated that there was debt and an incidence of default. It is the case of the Appellant that the Adjudicating Authority has completely overlooked the fact that IBBI (Application to Adjudicating Authority) Rules, 2016 mandates that a Section 7 application is to be supported by a Financial Contract between the Financial Creditor and the Corporate Debtor. However, in the present facts of the case there is no evidence of any document or instrument executed between the two parties setting out the debt amount, tenure of debt, interest rate and schedule of payment. Since the Section 7 petition is not accompanied by any document/agreement which outlines any financial debt and lays down terms of such a debt etc., the Section 7 petition was not maintainable. Per contra, it was contended by the Learned Counsel for Respondent No.1 that the term *"Financial Contract"* as defined in IBBI (Application to Adjudicating Authority) Rule, 2016 does not debar oral

contract and that a Financial Contract can be oral in terms of Section 10 of the Contract Act.

11. This issue of financial contract being a *sine qua non* for establishing a financial debt has been well settled in a judgement of this Tribunal in ***Agarwal Polysacks Ltd. vs K. K. Agro Foods & Storage*** in ***CA(AT)(Ins)No.1126 of 2022*** wherein after going into Regulation 8(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 3(1)(d) and Rule 4(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which regulates filing of application by the Financial Creditors, it has been held that written financial contract is not a pre-condition or an exclusive requirement for proving existence of debt. It has been further amplified therein that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and CIRP Regulations makes it clear that financial debt can be proven from other relevant documents and it is not mandatory that written financial contract can be the only basis for proving the financial debt.

12. It is the contention of the Respondent No.1 that the Corporate Debtor had clearly acknowledged the receipt of assistance from the Financial Creditor in their balance sheet for the year ending 31.03.2017 which was filed with the RoC. The assistance received was reflected under the heading *"Short term Borrowings-Inter Corporate loans"* and the balance sheet further reflected that *"all the above loans are repayable on demand"* though the name of Financial Creditor is not specifically stated in the balance sheet.

13. Coming to our analysis and findings on this standpoint, we find that though the name of the Respondent No. 1 is not specifically mentioned as a creditor, there is sufficient material on record to prove that there was disbursal of funds by Respondent No.1 to the Corporate Debtor in their account. The transaction details as culled out from the Ledger Account of the Corporate Debtor, which are quite clearly multiple in nature, are a part of record as placed on affidavit by the Respondent No.1 as may be seen at pages 172-174 of Appeal Paper Book (**"APB"** in short). That this monies were received by the Corporate Debtor has also not been denied by the Corporate Debtor. When we peruse the material placed on record, we find that the Financial Creditor also sent a communication dated 15.04.2017 to the Corporate Debtor seeking confirmation of the Corporate Debtor on their accounts as standing in the books of Financial Creditor for the period 01.04.2016 to 31.03.2017 as placed at pages 44-45 of APB. We also find that the accounts have been duly confirmed and signed by the Corporate Debtor wherein the financial assistance has been acknowledged including interest @ 12% booked for FY 2016-17 on the assistance disbursed by the Financial Creditor. We also find that in the demand notice issued by the Respondent No.1, it was noted that the Corporate Debtor had returned some amount back to the Financial Creditor during the period from 14.09.2016 till 31.05.2019 as is seen at page 47 of APB. That the Corporate Debtor repaid certain amount of the outstanding debt between September 2016 till May 2019 also evidences acknowledgement of debt. Since no claim been made that entire sum was repaid by the Corporate Debtor, we can safely infer that the debt remained unpaid.

14. Given this backdrop, we have no doubt in our mind that Respondent No. 1 has produced incontrovertible and unimpeachable evidence to prove the existence of debt liability on the part of the Corporate Debtor.

15. The second limb of argument of the Appellant which now needs to be looked into is whether the interest rate sought in the Demand Notice and mentioned in the Ledger Account being at variance, whether the quantum of debt amount as claimed by the Respondent No. 1 was due and payable. It is the case of the Appellant that the Ledger Account of the Corporate Debtor in the books of accounts of the FC shows the amount due as Rs. 34.99 lakhs while the Demand Notice of the FC reflects Rs. 1.51 cr. It is also the contention of the Appellant that the Financial Creditor in the Demand Notice claimed an interest component of 18% per annum while in the Ledger Accounts maintained in their books of account, the interest amount booked is at the rate of 12% per annum till 31.03.2016. It has also been contended by the Appellant that though the Financial Creditor in the Section 7 petition has claimed that interest was payable every year, however in their own Ledger Account for the period 01.04.2016 to 31.03.2020, interest has been shown as due and payable only up to 31.03.2017 and thereafter no provision has been made for accrual of interest after 31.03.2017. It is also contended by the Corporate Debtor that the claim of the Financial Creditor that it had the liberty to choose the interest income accounting either on accrual basis or on receipt basis is neither supported by any document or any provision of law. It has also been contended that mere payment of TDS does not amount to acknowledgement of a debt and furthermore, the Corporate Debtor had never deposited the TDS but the same

had been paid by the Financial Creditor in order to avoid liability for non-payment of TDS. The Appellant has also relied on the judgement of this Tribunal in ***Prayag Polytech Pvt. Ltd. Vs Gem Batteries Pvt. Ltd. in CA(AT)(Ins.) No. 713 of 2019*** where it has been held that mere deduction of TDS would not be sufficient to conclude that there was financial debt.

16. Per contra, it has been contended by the Financial Creditor that the Corporate Debtor had deposited part TDS amount of Rs 2.66 lakhs towards interest payment on 01.08.2018 which clearly establishes that there was an understanding between the two parties in respect of interest payment as integral to the monies disbursed by them to Corporate Debtor. It was also pointed out that interest was continuously leviable on the debt even after 31.03.2017 until the date of default, however as no interest amount was paid by the Corporate Debtor, no TDS was deducted by the Financial Creditor. For the period until 31.03.2017, Financial Creditor had chosen the accounting method of treating interest income of the Corporate Debtor on accrual basis and from 01.04.2017 onwards, Financial Creditor chose the interest income accounting on receipt basis.

17. We do not wish to go into the propriety of the accounting principles being followed by the Financial Creditor. All that we find relevant to be noticed is that in the accounts confirmed and signed by the Corporate Debtor, there is clear indication that interest at the rate of 12% was booked for FY 2016-17 on the assistance disbursed by the Financial Creditor. We also find that TDS Form 26AS reflects that Rs 2,66,558/- was booked under Section 194A of the Income

Tax Act towards TDS amount as placed at page 46 of the APB. It is settled law as laid down by the Hon'ble Apex Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416*** and in ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited & Ors. (2020) 8 SCC 401***, that any debt to be treated as financial debt, there must happen disbursal of money and the disbursal must be against consideration for time value of money. Undoubtedly, the most typical illustration of time value of money is in the form of interest on the principal amount that has been borrowed. The present is a case where the disbursal of monies was clearly accompanied by interest amount leviable thereon, the disbursal has all the trappings of a financial debt and squarely falls within the purview of Section 5(8) of IBC.

18. We have no quarrel with the proposition laid down in ***Prayag Polytech judgement*** supra that TDS cannot be the basis of a financial debt, but the present facts of the case is distinguishable in that the Adjudicating Authority has relied on material other than TDS in coming to the finding that financial debt owed by the Corporate Debtor to the Financial Creditor.

19. At this stage, it will be useful to look at the impugned order to see how it has analysed the facts of the case before arriving at its findings. The aspect of debt and default has been dwelt at length by the Adjudicating Authority in the impugned order. We find that the Adjudicating Authority after relying on the judgements of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. supra*** and ***Swiss Ribbons Pvt. Ltd. & Ors. Vs. UoI & Ors. in Writ Petition (Civil) No. 99 of 2018*** came to the conclusion that this is a fit case for admission

of Section 7 application against the Corporate Debtor since the sums taken by the Corporate Debtor had become due and payable on demand and inability to pay by the Corporate Debtor was clear. We are reproducing the relevant paragraphs of the impugned order as below:

> *"15. It is evident from the documents on record that the advance was availed from the Financial Creditor by the Corporate Debtor and that amount was duly disbursed to the Corporate Debtor from time to time. The balance confirmation statement which has also been signed by the Corporate Debtor evidences the fact that the amount was disbursed and the same is an acknowledgement of liability. In addition to the balance confirmation statement the liability of the Corporate Debtor is clearly reflected in the balance sheet of the Corporate Debtor.*
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> *.....*
>
> *19. The above settled position of law is directly applicable to the facts of the present case. In view of the same, it is abundantly clear that the Corporate Debtor owes a financial debt to the Financial Creditor. There is Balance confirmation by the Corporate Debtor of the dues payable to the Financial Creditor. On account of its acknowledgement of debt the Corporate Debtor has confirmed the amount as stipulated in the confirmation of accounts dated 15.04.2017, due and payable to the Financial Creditor. The Financial Creditor submits that in view of the Corporate Debtor's loan having become due and payable on demand and its failure and inability to pay the same, the Petition to be admitted.*
>
> *20. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that Corporate Debtor owes money to the Financial Creditor."*

20. Thus, to answer the second issue raised by the Appellant, we are of the considered view that we have no reasons to disagree with the findings of the Adjudicating Authority that it has concluded the existence of debt on the basis of documents/records like the balance confirmation statement in the balance sheet of the Corporate Debtor to establish existence of debt. It maybe pertinent to add here that it has been rightly contended by the Financial Creditor that the quantum of debt is not to be looked at during the stage of admission as held by

this Tribunal in ***Rajesh Kedia Vs Phoenix Arc*** in ***CA(AT)(Ins.) No. 996 of 2021.*** It is not for the Adjudicating Authority to decide on the quantum of debt but the only requirement for admission of Section 7 petition is to see that the minimum outstanding amount should be more than the threshold amount under the IBC which clearly stands fulfilled in this case.

21. We now come to the third plea raised by the Corporate Debtor that the Financial Creditor had filed the Section 7 application as a counter-blast to the Company Petition No. 2161 of 2019 which had been filed against Centrio, a sister concern of the Financial Creditor. This Company Petition had been separately filed by the Corporate Debtor since Centrio was liable to repay an amount of Rs 12.39 Cr plus accrued interest to the Corporate Debtor in terms of an MoU purportedly executed between the Corporate Debtor, Centrio and M/s MJ Shah Realtors LLP (which allegedly happen to be the common promoters of Centrio and the Financial Creditor). It was pointed out that para 7 of the MoU clearly stated that the amount claimed by the Financial Creditor was to be adjusted against the amount outstanding towards the Corporate Debtor by Centrio. Since the claim of the Financial Creditor had been adjusted towards liability of Centrio by virtue of this MoU, all liabilities of the Corporate Debtor stood discharged and there was no default.

22. From the material placed on record, it is clear that the MoU in question was entered between Centrio, Corporate Debtor and M/s MJ Shah Realtors LLP. There is nothing to evidence that the same was signed, executed or acted upon by Respondent No.1. When there is nothing to show that the Respondent No. 1

was a party or signatory to the said MoU and also keeping in mind that the Respondent No. 1 and Centrio are clearly separate legal entities, the terms of such MoU purportedly signed between Centrio and Corporate Debtor cannot be held to be binding in any manner on Respondent No. 1. Hence, to answer the third question raised by the Appellant, we are of the view that the submission advanced of adjustment of loan by virtue of the terms contained in the MoU and consequential non-requirement for the Corporate Debtor to repay the Respondent No.1 does not inspire our confidence.

23. This brings us to the last argument canvassed by the Appellant that in terms of the order of this Tribunal, the Appellant had deposited Rs 34.99 Lakh along with interest at the rate of 12% per annum for two years. However, the Financial Creditor has refused to accept this amount which shows that this is not a bonafide action on the part of the Financial Creditor. Reliance has been placed on the judgement of this Tribunal in ***Jag Mohan Daga Vs Bimal Kanti Chowdhary, Interim Resolution Professional of M/s Vindhya Industries Pvt. Ltd. & Anr.*** in ***CA(AT)(Ins.) No. 848 of 2022,*** wherein it has been held that when an offer is made by the Corporate Debtor to pay the entire demanded amount with interest but is refused by the Financial Creditor, it clearly indicates that the Financial Creditor wants to drag the CIRP process and is not interested in the debt. It was also added that the said judgment of this Tribunal also relied on the judgment of Hon'ble Supreme Court in ***Vidarbha Industries Pvt. Ltd. Vs Axis Bank*** in ***CA No. 4633 of 2021*** wherein it has been held that it is not mandatory to admit a Section 7 application merely on proof of debt and default. CIRP should not be allowed to continue when Financial Creditor pushes for CIRP

not for purposes of insolvency resolution of the Corporate Debtor but for pursuing some agenda other than insolvency resolution. Hence, on this very ground, the appeal ought to be allowed and the present Section 7 petition is liable to be set aside.

24. Refuting the contention of the Appellant, it has been contended by the Respondent No.1 that the amount deposited by the Appellant in this Tribunal does not take into account the interest from the due date till filing of Section 7 petition. It was stated that even if the same is taken into consideration at the rate of 12%, the total due amount would be Rs 96,19,022/-. It was vehemently contended that the Respondent No. 1 cannot be forced to accept an amount which is below the interest rate mentioned in the Confirmation of Balance Statement. It was contended that the ratio of ***Jag Mohan Daga*** does not apply since in that case the entire amount was offered for repayment which is not so in the present case. It was also pointed out by the Financial Creditor that the Hon'ble Apex Court had clarified in the ***Vidarbha judgment*** that it was limited to the facts of that case and was not to be applied as a general rule. The only requirement for admission of Section 7 petition is to see that the minimum outstanding amount should be more than the threshold amount under the IBC which clearly stands fulfilled in this case. It is the case of the Respondent No. 1 that once existence of debt and default is established, the Adjudicating Authority has no scope to exercise discretion and must admit Section 7 application.

25. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor

as long as the amount in default is above the threshold limit. It is also well accepted that debt means a liability in respect of a claim and claim means a right to payment even if it is disputed. We find that the Corporate Debtor has nowhere countered that Corporate Debtor is not liable to pay the outstanding amount to the Financial Creditor except for questioning the quantum of debt. However, as long as the financial debt is more than the threshold limit, quantum of debt cannot be used as a ground of defence to assail the admission of Section 7 application.

26. In our considered view, on the question as to whether debt and default was adequately demonstrated before the Adjudicating Authority, basis the records made available before it, the Adjudicating Authority has rightly concluded that it was satisfied with the evidence and material produced before it by the Respondent No.1 to prove that a debt had arisen; that a default has occurred and the default is above the prescribed threshold. This is a case where all the pre-requisites for filing a Section 7 stands fulfilled and the Adjudicating Authority cannot be held to have committed an error in admitting the Corporate Debtor into CIRP for having defaulted in repaying a financial debt which was above the threshold limit.

27. With the aforesaid discussion, we affirm the decision of the Adjudicating Authority admitting the Section 7 application. The Appeal fails and is dismissed. The interim order putting a stay on the constitution of Committee of Creditors is vacated and IRP may now proceed with the CIRP proceedings in accordance with law. The intervention application filed by Pratiti Trading Pvt. Ltd is also

disposed of with the liberty given to them to file their claims before the Resolution Professional as per law.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 15.10.2024

Abdul/Harleen