

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 4671/MB/2018

Under section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of
the Insolvency and Bankruptcy

(Application to Adjudicating Authority)
Rules, 2016

In the matter of

Sudhir T Deshpande

... Financial Creditor

Versus

Dhanada Corporation Limited

..... Corporate Debtor

Order Delivered on :- 26.08.2022

Coram:

Justice P.N. Deshmukh : Hon'ble Member (Judicial)

Mr. Shyam Babu Gautam : Hon'ble Member (Technical)

Appearances:

For the Petitioner: Mr. Pulkit Sharma

For the Respondent: Mr. Sahil Salvi

ORDER

Per:- Justice P.N. Deshmukh, Member Judicial

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) seeking to initiate Corporate

Insolvency Resolution Process (“CIRP”) against Dhanada Corporation Limited, (“the Respondent”) alleging default in payment of a Financial Debt.

2. The Respondent Company is incorporated on 14.07.1986 under the Companies Act, 1956. The Authorized Share Capital of the Respondent/Corporate Debtor Company is Rs. 15,80,00,000/- and the Paid Up Share Capital is Rs. 5,59,33,581/-.

The Submissions of the Financial Creditor are as follows: -

3. The Corporate Debtor Company was earlier known as Vedant Hotels Limited. The change of name Certificate issued by the Ministry of Corporate Affairs is annexed with the Petition. The amounts paid to the Corporate Debtor were paid by Mr. Sudhir Deshpande and the family members of Mr. Sudhir T Deshpande on his behalf.
4. In the requisite Form, under the head “Particulars of Financial Debt” the Total amount of Debt granted is Rs. 4,61,00,000/- (Rupees Four Crores Sixty One Lakh Only). Total amount claimed to be in default is Rs. 23,22,23,222/- as on 30.09.2018. The said amount is payable along with further interest @ 19% p.a. from 01.10.2018.
5. The Financial Creditor submits that the above amounts were paid by and on behalf of Mr. Sudhir T. Deshpande as and by way of investment in the Corporate Debtor Company.
6. The Financial Creditor further submits that an e-mail dated 28.01.2011, sent by the Director of the Corporate Debtor Company states that the Financial Creditor would be paid an amount of Rs. 7,07,92,646/- on the date of maturity i.e. on 31.12.2011. The

Corporate Debtor however defaulted making the above payment. In order to partly discharge the above debt, the Corporate Debtor Company issued various cheques aggregating to Rs. 2,20,00,000/-. The said cheques were however returned as dishonoured.

7. The Financial Creditor has attached copies of the Bank statements reflecting the payments by and on behalf of Mr. Sudhir T. Deshpande.

The Submissions of the Corporate Debtor are as follows: -

8. The Corporate Debtor filed its Reply dated 16.07.2019 in their defence. The Corporate Debtor has raised the issue of maintainability on the ground that the Financial Creditor has not demonstrated any claim, debt including the Financial Debt and/or default in relation to the alleged Corporate Debtor.
9. The Financial Creditor has not fulfilled the pre-requirements mentioned in form of the petition as per the prescribed Form 1 under section 7 of the Code. The Financial Creditor have not produced any evidence as to the existence of the claim. The Financial Creditor has failed to comply the said requirements of the part I of the said form.
10. Further, the purported Financial Creditor claims that the alleged Corporate Debtor incurred obligation i.e. debt amounting to Rs. 23,22,23,333/- arising out of certain documents produced in the Application. There is nothing to demonstrate any valid claim against the alleged Corporate Debtor.
11. The Corporate Debtor further submits that in the Petition under the particulars of Financial Debt, the total amount of Debt granted Rs.

4,61,00,000/- (Rupees Four Crores Sixty One Lakh Only) was disbursed in following tranches :-

Date	Amount
As on 31.12.2008	3,15,00,000/-
As on 30.06.2009	66,00,000/-
As on 01.04.2010	80,00,000/-
Total	4,61,00,000/-

Later the said amounts on the date of maturity i.e. on 31.12.2011 was Rs. 7,07,92,646/-. It is noted that the present petition filed by the Financial Creditor before this Tribunal is on 13.12.2018 on the cause of action and the Financial Creditor alleged an amount of Rs. 7,07,92,646/- on 31.12.2011 i.e. on the date of maturity. Further as per the documents produced on record, after the year of 2013, the Corporate Debtor has never ever acknowledged the liability against the Financial Creditor and the debt is a time barred debt.

12. Further, the amount as claimed are not in pursuance to any legal obligation enforceable contract or agreement and therefore does not fall within the purview of the definition of Financial Credit extended to the Corporate Debtor.

FINDINGS

13. We have heard the submissions of the Counsel appearing for the Financial Creditor and Counsel appearing for the Corporate Debtor.
14. This Bench observes from the records available that the Financial Creditor has filed the present Petition belatedly much after the expiry of the prescribed period of limitation. Further it is seen from the records that the Financial Creditor has filed an Additional Affidavit contending that the said Petition is not barred by limitation since the Financial Creditor has filed a civil suit for the recovery of the Financial Debt. This Bench is of the considered view that both the proceedings are independent. The Financial Creditor has filed two different proceedings before both courts for the same cause of action.
15. Further it is also noted that after the year 2013, the Corporate Debtor has not acknowledged the liability against the Financial Creditor and hence the debt is hopelessly barred by the law of limitation and cannot be adjudicated upon by this Tribunal and deserves to be dismissed in *limine*.
16. Further the copies of the cheques annexed to the Petition are from the personal account issued by one Mr. Ramesh Havele in his personal capacity. Therefore, the said cheques are not a proof of evidence of any liability owned to the Corporate Debtor. Further, the working computation for arriving at the aforesaid amount is baseless and the rate of interest applied is in absence of any valid document or agreement and hence not binding.

17. Further, it is worth to reproduce sub-Section of (5) of S. 7 of the Code as follows:

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

18. On going through the facts and submissions of the Financial Creditor and the Corporate Debtor it is concluded that the Financial Creditor has not established that the money was disbursed to the Corporate Debtor and hence the question of default on the part of the Corporate Debtor does not arise.

19. Without proof of disbursement, the said amount cannot be claimed as financial debt, as a disbursement is a sine qua non for any debt to fall within the ambit of the definition of financial debt. Reliance is placed on Judgment of the Hon'ble National Company Law

Appellate Tribunal in *Dr. B.V.S Laxmi Vs. Geometrix Laser Solution Private Limited [2018] 142CLA321:*

“30. In the present case, the Appellant has failed to bring on record any evidence to suggest that she disbursed the money has been made against 'consideration for the time value of money'. There is nothing on the record to suggest that the Respondents borrowed the money. In absence of such evidence, the Appellant cannot claim that the loan if any given by the Appellant comes within the meaning of 'financial debt' in terms of sub-section (8)(a) of Section 5 of the 'I & B Code’.

20. For the foregoing reasons, the above Company Petition is liable to be rejected.

ORDER

It is, accordingly, hereby ordered as follows: -

The petition bearing **CP (IB) 4671/MB/C-II/2018** filed by **Sudhir Deshpande**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Dhanada Corporation** the Corporate Debtor, is **rejected**.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)